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Supreme Court, U.S.
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No.

In The

SUPREME COURT of the UNITED STATES

MARIAN NAWROCKI and
BARBARA WILLIAMS-HUBBARD,

Plaintiffs/Petitioners

v.

MARIA NAWROCKI and
IMMANUEL SMITH,

Defendants/Respondents

On Petition for Writ of Certiorari
To The Superior Court of New Jersey
Appellate Division

PETITION FOR WRIT OF CERTIORARI

MARIAN NAWROCKI
BARBARA WILLIAMS-HUBBARD, his wife
PLAINTIFFS/PETITIONERS, Pro Se
P.O. Box 4806, Clifton, New Jersey 07015
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QUESTIONS PRESENTED

A. Introductory Statement: This case concerns the denial of the right to representation, due process and equal protection of the law under the Fourteenth Amendment to plaintiffs' minor granddaughters whose reports and behaviors were indicative of sexual abuse and exploitation. It also concerns the abuse of discretion of state courts in delegating their decision-making authority entirely to the Division of Youth and Family Services (DYFS). It further concerns discrimination against plaintiffs as reporting persons who challenged DYFS procedures and the validity of an untimely evaluation and were denied access to DYFS records and findings, thereby adversely impacting plaintiffs' ability to advocate for the children and their rights.

B. Questions Presented for Review:

Of National Interest:

1. What remedial actions can be taken by children and/or their advocates when the agencies designed to protect them fail to do so, when the Courts do not question the procedures of those agencies and when those procedures and court procedures violate federal and state statutes and put children at risk?

2. How can the government in its role as parens patriae insure that the best interest and welfare of children is not subordinated to the interests of the parents, the Court and its agencies, particularly in matters pertaining to the sexual abuse and exploitation of minors?

3. What remedial actions can be taken by children or their advocates that will insure children equal protection under the Constitution of the United States and insure that both they and their advocates are not discriminated against in both the reporting and the Court processes?

Case Specific Question:

4. In the case at hand, did the State Courts procedurally abuse their discretion and violate the children's Fourteenth Amendment rights to representation, due process and equal protection and plaintiffs' rights to due process?

LIST OF PARTIES

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The highest state court to review the merits was the Superior Court of New Jersey, Appellate Division. The decision of the Appellate Division on plaintiffs' second appeal appears at Appendix A. 1-10 to the Petition, is reported at njcourtsonline.com, http://www.judiciary.state.nj.us/appdiv/index.htm, under Legal Reference Desk, Supreme/Appellate Opinions, Archived Opinions, and is unpublished.

The decision of the Appellate Division on plaintiffs' second appeal Motion for Reconsideration appears at Appendix A. 11-12 to the petition; unpublished.

The decision of the Appellate Division on plaintiffs' second appeal Motion requesting the Appellate Division by its own motion to join the Division of Youth & Family Services as Third Party Defendant, and compel release of DYFS records/findings to plaintiffs, or in the alternative to grant plaintiffs permission to change trial court venue (remand) for purpose of same appears at Appendix A. 38-39 to the petition; unpublished.

The decision of the Appellate Division on plaintiffs' second appeal Motion requesting the Appellate Division by its own motion to grant plaintiffs custody/guardianship or visitation while appeal is pending, or in alternative, grant permission to change trial court venue for purpose of same appears at Appendix A. 36-37; unpublished.

The decision of the Appellate Division on plaintiffs' second appeal Motion to Accelerate the appeal appears at Appendix A. 40-41 to the petition; unpublished.

The decision of the Appellate Division on plaintiffs' first appeal appears at Appendix B. 1-3 to the petition and is unpublished.

The decision of the Appellate Division on plaintiffs' first appeal Motion for Reconsideration appears at Appendix B. 4-5 to the petition; unpublished.

The decision of the Appellate Division on plaintiffs' first appeal Motion to Accelerate the appeal appears at Appendix B. 6-7 to the petition; unpublished.

The decision of the Appellate Division denying plaintiffs' Motion for A Stay Pending Appeal in Appellate Division appears at Appendix B. 8-9 to the petition; unpublished.

The February 22, 2007 Order of the trial court (Essex County) noting that the final order of December 5, 2005 (Amended December 20, 2005) was final appears at Appendix C. 1-2 to the petition; unpublished.

The decision of the trial court (Essex County, NJ) denying plaintiffs' Motion for Stay Pending Appeal appears at Appendix C. 3-5 to the petition; unpublished.

The trial court's Amended December 20, 2005 Order (with corrected caption) denying plaintiffs' Order to Show Cause/Verified Complaint appears at Appendix C. 6-8 to the petition; unpublished.

The trial court's original December 5, 2005 Order (with incorrect caption) denying plaintiffs' Order to Show Cause/Verified Complaint appears at Appendix C. 9-11 to the petition; unpublished.

The trial court's October 31, 2005 signed Order granting plaintiffs a hearing on their Order to Show Cause/Verified Complaint and respondents opportunity to respond appears at Appendix C. 12-14; 15-38; unpublished.

The decision of the New Jersey Supreme Court denying discretionary review appears at Appendix D. 1 ; unpublished.

JURISDICTION

The date on which the highest state court, the Appellate Court, decided our case was February 11, 2008. A copy of that decision appears at Appendix A. 1-10.

A timely petition for rehearing and clarification was thereafter denied on March 3, 2008; denial filed on March 6, 2008. A copy of the order denying rehearing appears at Appendix A. 11-12.

A timely Petition for Certification in the New Jersey Supreme Court was thereafter denied on May 13, 2008; denial filed May 16, 2008. A copy of the order denying the Petition for Certification appears at Appendix D.1.

The jurisdiction of this Court is invoked under U.S. Supreme Court Rule 13 and 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

PROCEDURAL HISTORY

Over a two-year period beginning in 2003, Plaintiffs alerted the Division of Youth and Family Services three (3) times to reports and behaviors of their minor granddaughters (now 8 and 6 1/2) in which the children identified their parents and other adults as perpetrators against them of incidents constituting three (3) separate rounds of sexual aggression, exploitation and abuse. These incidents took place in October, 2003 (Pa73-Pa76)[1], January-February, 2004 (Pa77-Pa79) and December, 2004 – June, 2005 (Pa80-Pa89) and are recorded in a 40 page Compendium submitted to DYFS in June, 2005, and its Addendum now part of Plaintiffs' Appellate Appendix (Pa56-Pa121).

DYFS did not remove the children from their mother's custody (although the grandparents were willing to take custody) and did not do a Champs evaluation (for sexual abuse) per the recommendation of an examining doctor at Beth Israel Hospital, Newark in October, 2003. In addition, plaintiffs' January-February, 2004 reports to DYFS were ignored. Plaintiffs' concerns for their granddaughters ultimately culminated in their

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[1]"Pa" refers to Plaintiffs' Appellate Appendix.
"PaB" refers to Plaintiffs' Appellate Brief.

June, 2005 reports to DYFS (which was still unresponsive), their hiring of an attorney (Sara McArdle), an Appeal to the Office of the Attorney General and the filing of an Order to Show Cause/Verified Complaint on October 31, 2005 (Appendix C.12-38).[2] The Complaint was later supplemented with the Compendium and a log of plaintiffs' contacts with DYFS with details supporting their contention that DYFS mishandled this case at the outset (Pa148-Pa153; Sa73 – Sa78)[3].

The Order to Show Cause/Verified Complaint contained requests for both temporary restraints and other measures that if put in place would ensure the safety, welfare and best interest of the children. While the trial court judge allowed for one temporary restraint (enjoining the mother from leaving the state until an evaluation was done), plaintiffs contend she did not deal properly with other issues plaintiffs raised: the validity of DYFS' untimely evaluation (done on November 1st, 2005, the day DYFS was served with the Order to Show Cause, nearly two years after plaintiffs first reports to DYFS and over four months after plaintiffs last reports in June, 2005), the issue of a Guardian ad Litem for the children, an independent evaluation targeted to sexual abuse, the release of DYFS records/findings to plaintiffs as reporting persons, a change in custody and more.

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[2] "Appendix C" refers to Plaintiffs US Supreme Court Appendix (NJ Trial Court Exhibits).

[3] "Sa" refers to Plaintiffs' NJ Supreme Court Appendix.

There were three trial court dates – November 18, 2005, (rescheduled for November 29, 2005 because the Defendants did not appear), and December 5, 2005. On December 5, 2005, the Court denied plaintiffs' requests (2T42:3-2T43:3)[4], despite the Court's voiced concerns (2T30:17-22, 2T42:13-18) and the Division of Youth and Family Services was ordered to submit to the Court the "legal medical report and determination of the investigation" (Appendix C.9-11; 6-8).

The Court based its decision on a verbal from the deputy attorney general as the deputy did not have all the information the Court requested on the day the Court made its decision. The Court then allowed Plaintiff MN's daughter, MN, to leave New Jersey for Michigan where she resided with the children in her mother's trailer home until August, 2007 when she returned to New Jersey where she now again resides.

The December 5, 2005 Order was amended on December 20, 2005 due to an incorrect caption (Appendix C. 6-8). There was never any trial in this matter, although same was requested a number of times by Plaintiffs' then counsel, Ms. McArdle.

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[4] The trial court transcript dated November 29th, 2005 shall be referred to as 1T (Sa91-Sa106 in NJ Supr. Ct. Appendix)

The trial court transcript dated December 5, 2005 shall be referred to as 2T (Sa107-Sa154 in NJ Supr. Ct. Appendix).

Plaintiffs filed Pro Se for Stays Pending Appeal and were denied in both the trial (Appendix C. 3-5) and Appellate Courts (Appendix B.8-9)[5] before filing their first Appeal Pro Se with the Appellate Division on February 26, 2006 (Pa48-Pa52).

Plaintiffs also filed a Motion to Accelerate their appeal; denied June 5, 2006 (Appendix B.6-7).

Oral argument was heard on October 24, 2006 before Judges Coburn and Gilroy with Bonnie C. Frost, Esq. arguing the cause for the appellants. Appellants' first appeal (Docket No. A-3574-05T2) was dismissed November 6, 2006 (Appendix B.1-3).

After the dismissal of Appellants' first Appeal due to the Appellate Division's incorrect understanding that no complaint was filed and that the case was interlocutory, not final on the trial court level, Appellants then-counsel Bonnie Frost, Esq. filed for Reconsideration, providing the Court with the Essex County docketing notice noting the case as a Complaint for Custody, etc. (Appendix C. 35-38) and a notice that the case had been disposed (Pa181-Pa182). The Motion was denied December 5, 2006; denial filed December 7, 2006 (Appendix B.4-5).

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[5] "Appendix B" refers to Plaintiffs' US Supreme Court Appendix (Appellate Court's decisions on first Appeal).
"Appendix A" refers to Plaintiffs' US Supreme Court Appendix (Appellate decisions on second Appeal).

Counsel then prepared an Order filed February 22, 2007 and signed by the trial court judge confirming that the December 5, 2005 Order of the trial court judge (Amended 12/20/05 due to incorrect caption) had closed the matter (Appendix C.1-2).

Appellants then re-filed their Appeal by Notice dated April 7, 2007 (Pa188-Pa190) and Amended April 19, 2007 (Pa192-Pa194). Plaintiffs new Appeal was filed Pro Se on June 7, 2007 under Docket No. A-4067-06T3.

Appellants filed the following Motions/Requests during the course of their second Appeal:

1. Motion to Place Case on Accelerated Track; filed June 7, 2008 (Appendix A.40-41)(Sa46-Sa48); denial filed June 25, 2007.

2. Motion Requesting the Appellate Division by its own Motion to Join DYFS as a Third Party Defendant and Compel Release to Plaintiffs of DYFS Records/Findings, or in the Alternative to Grant Plaintiffs Permission to Change Trial Court Venue for Purpose of Same, filed August 13, 2007; denial filed September 13, 2007 (Appendix A.38-39)(Sa49-Sa84).

This motion was filed partly to correct an error of Plaintiffs' first counsel Ms. McArdle who failed to name DYFS as a defendant in the filing of the

original Order to Show Cause/Verified Complaint.

3. Request for Oral Argument filed August 13, 2007 (Sa85-Sa86).

4. Motion Requesting Appellate Division by its own Motion to Grant Plaintiffs Custody/ Guardianship or Visitation while the Appeal is Pending, or, in the Alternative, Permission to Change the Trial Court Venue for Purpose of Same, filed August 22, 2007; denial filed September 13, 2007 (Appendix A.36-37)(Sa88-Sa90).

Oral argument was heard before Appellate Judges Coburn, Fuentes and Grall on January 23, 2008 (Sa87) with Plaintiffs presenting Pro Se. On February 11, 2008, the Appellate Division rendered its decision to affirm without opinion the trial court's decision (Appendix A.1-10).

Plaintiffs/Appellants Motion for Reconsideration/ Clarification was filed February 20, 2008 (Appendix A.13-35), denied March 3, 2008; denial filed March 6, 2008 (Appendix A.11-12) (Sa12).

On March 14, 2008, Plaintiffs filed a Notice of Petition for Certification in the Supreme Court of New Jersey; received March 18, 2008 (Sa40-Sa42). The Petition under Docket No. 62,449 was denied discretionary review on May 13, 2008, denial filed May 16, 2008 (Appendix D.1 to this Petition).

STATEMENT OF FACTS

At the time of the December 5, 2005 "hearing", the minor female children were 5½ and 4 years old. The children are now 8 and 6 ½. Although until a recent encounter, plaintiffs had not seen the children in more than two years, they have continued to send the children mail and packages which are sometimes accepted, other times returned.

Despite the circumstances, the children also continue to try to reach out for their grandparents who had been both primary caretakers of the children since their birth and their "psychological parents" (2T7:1-2T8:1-5).

The children were born into the plaintiffs' household and lived there until November 2002 and again in the summer of 2003. After that, the children lived more than half of the time with plaintiffs until June of 2005 due to issues between their parents (work and school schedules, domestic violence, drugs, divorce, evictions, their father's arrests and jail time for drugs, violations of restraining orders and probation).

The character of the parents and the circumstances they created for the children are described in plaintiffs' Appellate Brief (PaB, pgs. 10-39) and in their Compendium (Pa56-Pa121).

Plaintiffs shared the incidents of sexual abuse and activities that the children reported and demonstrated to them with law enforcement officers, child sex abuse experts (Dr. Susan Esquilin, UMDNJ, et. al.), the Essex County prosecutor (Marc Ali), the Office of Child Advocacy and others. Child sex abuse experts confirmed that the children's reports and behaviors were indicative of sexual abuse.

All the resource persons plaintiffs consulted encouraged them to keep working with DYFS. Plaintiffs did so in good faith until the agency's ineptness became so apparent that its words and procedures could no longer be trusted. It appeared to plaintiffs that DYFS major concern was not to protect the children, but to protect itself from scrutiny instead.

The fact that DYFS never removed the children, resisted doing a Champs evaluation (for sexual abuse) for two years, despite the recommendation of an examining doctor at Beth Israel Hospital, Newark in October, 2003, and then did a 45 minute evaluation on the day they were served with the Order to Show Cause (4 months after plaintiffs' June, 2005 reports) led plaintiffs to the above conclusion. Once plaintiffs began to question DYFS procedures, they lost DYFS support.

Plaintiffs were decidedly appalled, for example, to be told that DYFS had no one trained in child sexual

abuse on their staff; they were further appalled to have a DYFS worker categorize the children's reports and behaviors as "hearsay" (Sa75-Sa76) as opposed to serious indicators that their safety and welfare was in jeopardy. Some examples of the children's statements that DYFS and the courts chose to ignore are:

1. Before a bath one night, I. (the younger child) spread her legs and stated to plaintiffs: "Daddy said he's going to cut this piece." Plaintiffs asked: "What piece?" I. stated: "This piece" and pointed to and touched her clitoris. Plaintiffs asked: "With what?" I. replied: "Oh, with a knife"(Pa88,para.17).

2. F. stated to plaintiffs: "When the Butt man puts something in your mouth, it stays there a long time." When asked what he put in her mouth, F. placed her fingers on her tummy, then traveled with her fingers down to her vaginal area, pointed to it, looked up and stated: "his tummy?" (Pa84). She was only 4 at the time and did not know the right word to use.

3. F. stated to her grandparents: "I masurate and the Butt man comes"(Pa85). Another time, she stated after toileting and wiping herself, "I like it hard; the Butt man likes it too"(Pa84-Pa85); also (PaB48)in Appellate Brief.

DYFS had this information in plaintiffs' Compendium in June, 2005; yet they did not remove the children from their mother's care. Experts say that: (See Sa155)

> **"Children rarely lie about sexual abuse. Younger children do not understand what it is, and older children are often too frightened to talk about the abuse, let alone make up false reports. Disclosure of any kind should be treated seriously."[6]**

Sadly, DYFS did not treat the children's disclosures seriously. Essex County prosecutor Marc Ali called the situation a "tragedy" and the Office of Child Advocacy asked Plaintiffs if they could use this case as an "example" of children who "fell through the cracks."

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[6] Myths and Facts About Child Sexual Abuse; Prepared by Shirley B. Souder for MCC Domestic Violence Task Force, July 1989 (Sa155)

ARGUMENT on FACTS

PLAINTIFFS' ASSERT THAT THE WELFARE AND BEST INTERESTS OF THE CHILDREN WERE SUBORDINATED TO THE INTERESTS OF THE PARENTS, THE DIVISION OF YOUTH AND FAMILY SERVICES AND THE COURTS.

ALSO, THAT THE APPELLATE COURT IN AFFIRMING THE TRIAL COURT'S DECISION JOINED THE TRIAL COURT IN ABDICATING ITS PARENS PATRAIE RESPONSIBILITY, ABUSING ITS DISCRETION AND ELEVATING PROCEDURES OVER THE WELFARE AND BEST INTERESTS OF THE CHILDREN TO THE HARM OF THE CHILDREN AND IN VIOLATION OF THEIR CIVIL AND FOURTEENTH AMENDMENT RIGHTS.

I. Preliminary Statement:

As persons with information on the sexual abuse of children, plaintiffs MN (the mother's father) and BWH (her step-mother and a church elder) reported that abuse in good faith and in keeping with N.J.S.A. 9:6-8.34 (a), (d) which allows persons with such knowledge to commence an action.

Plaintiffs took their granddaughters reports and behaviors seriously and expected DYFS and the courts to do the same. Instead, plaintiffs encountered a court system unwilling to provide the children with measures of protection and only too

willing to delegate its entire decision-making authority to one of its agencies (DYFS), the procedures of which plaintiffs questioned and the records and findings to which they have been denied in violation of their rights as reporting persons according to N.J.S.A. 9:6-8.10a.b (18).

A. Statement: This matter involves the following issues and federal questions:

1. the constitutional and statutory rights of children to representation (which these children have been denied) in the form of a Guardian ad Litem whose expertise would provide a vehicle for their voices to be heard in matters concerning their own welfare and best interest.

2. the abuse of discretion of courts in choosing to delegate their decision-making authority to a child protective agency (DYFS) in a matter where litigants/reporting persons have challenged:

a) the validity of an untimely DYFS evaluation to which they have been denied access, and
b) the efficacy of DYFS procedures that they allege jeopardized rather than protected the subject children.

Plaintiffs assert that such a delegation of decision-making authority by courts ultimately leads to the elevation of procedures and third party interests over the welfare and best interests of children which plaintiffs believe has occurred in this

case. It also leads to discrimination against children's advocates, in this case grandparents, who brought these issues to the Court in good faith.

3. the right of access of litigants as reporting persons to Child Protective Services (DYFS) records and findings that would support their case with regard to the welfare and best interests of minor children.

In this case, plaintiffs allege from the children's testimonies and behaviors that they were sexually abused and exploited by their parents and other adults. Both the trial and Appellate Courts viewed DYFS records in camera. Plaintiffs have been denied access which would enable them to pursue their case on equal grounds with DYFS and the courts.

II. Summary: Plaintiffs' Points, Trial Court Decisions/ Errors and Appellate Court Review as related to Federal questions.

The eight (8) points plaintiffs presented on appeal follow with summary commentary on the trial court's decisions/errors, [7] Appellate Court review[8] and plaintiffs' Motion for Reconsideration.[9]

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[7] Trial Court Errors: Plaintiffs full arguments are found in their Appellate Brief (PaB40-PaB61)(not provided).

[8] Appellate Court's decision is found in Appendix A.1-10 to this petition.

[9] Plaintiffs' Motion for Reconsideration appears in Appendix A.13-35 to this petition.

A. Point One. The trial court abdicated its parens patriae responsibility by not questioning DYFS procedures and the validity of DYFS untimely evaluation and by ignoring its own concerns.

1. Comments on trial court decision:
(For full argument, see PaB42-PaB44).

Chapter 10:129A-3.3(c) governing Child Protective Services investigations states:

> **"Except for good cause approved by the office manager, the determination of investigation findings shall be made within 45 days of the Division's receipt of the referral."**

Plaintiffs complained to DYFS over a two (2) year period as indicated in their log of contacts with DYFS (Sa73-Sa78). The Champs evaluation for sexual abuse recommended by an examining physician at Beth Israel Hospital, Newark in October, 2003 was not done until nearly two (2) years later.

It was done more than four (4) months after plaintiffs' June, 2005 reports and nearly two (2) years after their first reports. The evaluation was done in 45 minutes on November 1, 2005, two (2) days after the mother had closed her apartment to leave the State and on the day DYFS was served

with the Order to Show Cause/Verified Complaint(1T11:5-14).

The trial court did not question DYFS procedures, DYFS reasons for allowing the mother to retain custody, or the validity of an obviously untimely evaluation. Plaintiffs counsel raised the issue of the validity of the evaluation numerous times (1T7:2-9; 2T5:7-2T6:1-23; 2T11:17-25. See Appendix E. 7-9), but the Court ignored the issue becoming distracted by other issues, i.e., the move to Michigan (1T7:18-19), etc.

Plaintiffs say the delay in getting the evaluation done and the fact that DYFS did not remove the children from their mother's custody gave the parents ample time to intimidate and brainwash the children.

Even though the Court used the term "alarmed" (2T42:13-18) in reference to plaintiffs Compendium, and agreed with plaintiffs' counsel as to the "substantial amount of instances in the Compendium which should raise concern" (2T30:17-22), the Court chose to ignore those alarming concerns in its decision (2T42:14-2T43:1-3). In doing so, the Court delegated its decision-making authority to DYFS, thus compromising the best interests and welfare of the children.

2. Comments on Appellate Court Review:

The Appellate Court citing R. 2:2-3 (a) (2); Selobyt v. Keough-Dwyer Corr. facility of Sussex County, 375 N.J. Super, 91, 95 (App. Div. 2005) in responding to this point states that:

> **"DYFS was not a party to this action. Review of the action or inaction of a state agency is the responsibility of this Court not the trial court...."**
>
> **and , " The question of the manner in which DYFS proceeded.....is not before us....."** (Appendix A. 8).

The Court, therefore, disposed of Point I of plaintiff/appellant's argument which questions DYFS procedures and the validity of DYFS's untimely evaluation.

Plaintiffs had an attorney at the time of the filing of their Complaint. The Order to Show Cause and Complaint were prepared by counsel. As stated in plaintiffs' Appellate Motion for Reconsideration (Appendix A.25), plaintiffs later recognized that counsel should have joined DYFS as a third party defendant at time of filing because of the issues plaintiffs raised concerning DYFS procedures.

Plaintiffs attempted to correct counsel's error by applying to the Appellate Court by Motion filed

August 13, 2007, requesting that the Appellate Court by its own Motion join DYFS as a third party defendant and compel release of DYFS records/finding to them while the appeal was pending or, in the alternative, to grant them permission to change the trial court venue for the purpose of making that application themselves. The Appellate Court denied this Motion on September 10, 2007 (Appendix A.38-39).

In denying this motion, the Appellate Court denied plaintiffs a remedy to support their case. The court then used the argument that since DYFS was not a party to the action, they could not therefore evaluate DYFS procedures, although if DYFS were a party, they would have the authority to review its procedures.

Both the trial court and the Appellate court used their discretion to affirm DYFS procedures and findings and did not consider it a duty to examine the procedures that led to the findings, despite the plaintiffs' urgent raising of this issue in both courts.

CONSTITUTIONAL AND STATUTORY APPLICATIONS:

The Federal question here is whether or not the Court's disposal of this issue was to the prejudice of the children and their Fourteenth Amendment rights and plaintiffs' rights as well. Plaintiffs assert that this case and the children have suffered because of

counsel's errors/omissions which the Court in its broad discretion had the power to correct.

The State question as concerns the New Jersey Constitution is whether or not the action of the courts was a violation of Article 1: Rights and Privileges, 1.¶ 1 concerning the defense of life and liberty and 1. ¶ 2.a. concerning the institution of government "for the protection, security and benefit of the people." The larger question is who are the courts protecting, the children or their own process when they delegate their entire decision-making authority to one agency?

B. Point Two: The trial court abdicated its parens patriae responsibility by censoring the voices of the children, denying them their right to be heard and their right to representation.

1. Comments on trial court decision: (Full argument in PaB45-PaB51)

Plaintiffs' say their grandchildren were unfairly censored. According to the Rules of Evidence, N.J.S.A. 2A:84A, Rule 63(33) as applied in State v. M.Z.,575 A.2d 82, 241, N.J. Super.444, in relevant part found that:

"Out of court statements made by a child victim of sexual abuse...were sufficiently trustworthy to be admissible where they were spontaneous, even though they took some time to come out and were not in a completely

matter of fact manner, where they were not prompted...."

The same case, State v. M.Z. in applying the same Rule found that the **"Rule permitting testimony concerning out of court statements of child victim of sexual abuse is not limited to psychologists or other expert witnesses."**

Clearly, there is precedence for the admissibility of children's spontaneous utterances in matters of sexual abuse and precedence for hearing testimony of persons other than experts (grandparents, for example), but neither DYFS nor the Court took the children's reports or the concerns of their grandparents seriously. The children's voices simply did not count.

By not appointing a Guardian ad Litem for the children, the trial court denied the children their right to representation in a matter that clearly concerns their welfare. According to N.J.S.A. 30:4C-12,Note 8 (Care, Custody, Guardianship):

"In all cases where it appears from an examination of Div. of Youth and Family Services' own files or from colorably reliable information presented to it that there is sufficient conflict of opinion concerning what is in the best interests of the child, or when it appears that the child's best interests are likely to be subordinate to interests of parents or Div.

of Youth and Family Services, independent representation for the child is required." Doe v. State, Dept. of Human Services, Div. of Youth and Family Services, 165 N.J. Super.392, 398 A.2d 562 (A.D. 1979).

Plaintiffs' counsel asked numerous times on behalf of the children for representation, first on November 29, 2005 (1T11:2-14 Appendix E.9). The Court declined at the first asking, saying the request was "inappropriate" and "premature" (1T11:25 – 1T12:1,2 Appendix E.9-10). The next time plaintiffs' counsel made the request (2T12:8-2T13:1-8 Appendix E.10), the court glossed over it and moved the discussion to other matters.

The court never returned to the issue of the Guardian ad Litem which plaintiffs say was crucial for the children's welfare in giving them a voice and crucial in determining whether Defendant MN's "home" was appropriate placement for the children.

2. Comments on Appellate Court Review:

In its decision to affirm, the Appellate Court interpreted plaintiffs' request for a Guardian ad Litem and all of plaintiffs' other requests "when read liberally" as requests "for temporary relief pertinent to and pending a determination about the abuse they alleged" (Appendix A.9). Plaintiffs assign error to this interpretation as the request for a Guardian ad Litem was a request for a protective measure for the children. Had this measure been

put in place and an independent evaluation granted, plaintiffs are convinced that the result would have been a change in custody. As stated in plaintiffs' Motion for Reconsideration, "this request was denied by the trial court solely because of convenience, i.e., the mother wanted to leave the State" (Appendix A. 24). Therefore, the long term best interest and welfare of the children was not considered.

CONSTITUTIONAL AND STATUTORY APPLICATIONS:

The case of Gregory K. v. Ralph K., Nos. C192-5127 & JU90-5245 (Fla. Orange County Cir. Ct. 1991) advanced the entitlement of children under the Fourteenth Amendment to legal representation in matters concerning their lives and welfare.

Article XII of the U.N. Convention of the Rights of the Child dictates that a child should have the right to "express views freely in all matters affecting the child" and the opportunity "to be heard in any judicial proceedings affecting the child....in a manner consistent with the procedural rules of national law." [10]

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[10] DEFENSE FOR CHILDREN INT'L—USA, CHILDREN'S RIGHTS , CRISIS AND CHALLENGE: A GLOBAL REPORT ON THE SITUATION OF CHILDREN IN VIEW OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD B38 (Dennis Nurkse & Kay Castelle eds., 1990)

Additionally, a child's need for independent representation was recognized with the passage in 1974 of the Child Abuse Prevention and Treatment Act (CAPTA) which required that:

> **"in every case involving an abused or neglected child which results in a judicial proceeding a Guardian ad Litem shall be appointed to represent the child in such proceedings..."**[11]

Despite the fact that there was a substantive conflict of fact and opinion between plaintiffs and the Div. of Youth and Family Services which statutorily would require the children to have their own representation, the children were denied this right (N.J.S.A. 30:4C-12,Note 8. Care, Custody, Guardianship as applied in Doe v. State, Dept. of Human Services, Div. of Youth and Family Services, 165 N.J. Super.392, 398 A.2d 562 (A.D. 1979) as quoted above).

The Federal question here is whether or not the Court's denial to the children of a Guardian ad Litem was to the prejudice of the children and their rights to due process and equal protection under the Fourteenth Amendment.

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[11] Pub. L. No. 93-247, 88 Stat. 4 (1974)(codified at 42 U.S.C. § § 5101-5107 (1988). Id. § 4(b) (2) (G)

Both Federal and State questions concern who in this instance represented the children. The children's only advocates were the plaintiffs, their grandparents. Neither the State (DYFS), nor the courts could adequately represent the children. The parents whom the children had identified as perpetrators could not represent them. Without a Guardian ad Litem, who then represented the children? Further, were the children ever advised of their right to representation?

In re Gault, 387 U.S. 1,13 (1967) the U.S. Supreme Court held that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone" and that "proceedings for juveniles had to comply with the requirements of the Fourteenth Amendment" which include the right to counsel.[12]

Plaintiffs raised the constitutionality of the Courts' decision on this issue in their applications for Stays Pending Appeal in both courts where they stated in their introductory statements:

> **"We, the children's grandparents and the plaintiffs in this matter believe that in denying us the relief requested, justice was not served and the best interests of the children were subordinated to the interests of the Division of Youth and Family**

[12] In re Gault. 387 U.S. 1 (1967). Oyez. U.S. Supreme Ct. Media

Services and the parents. We also believe that this was not so much as a denial to us as a denial of the children's right to be heard, in effect, invalidating them as persons endowed with the same inalienable rights all individuals have as guaranteed by the Constitution of the United States of America.

It is our position that our grandchildren were unfairly censored.....In the matter of their own welfare, F. and I. were unfairly censored and ignored. We cannot help but think that if the children had shown the behaviors described and made the statements they made to others (a police officer or teacher) instead of to their trusted grandparents, the children might have been believed. This raises the issue of prejudice and discrimination in the application of the law which is another argument in itself. There is prejudice against the children because they are children and discrimination against grandparents because, well, they're grandparents" (Pa25).

The constitutionality of the court's decision was also raised in plaintiffs' Appellate brief (PaB40):

"....this denial was a denial of the children's right to be heard, in effect invalidating them with the same

inalienable rights all individuals have as stated in the Declaration of Independence.....This denial ...was a censoring of the children in violation of the First Amendment to the Constitution of the United States of America.....in denying the children a Guardian ad Litem, the children were denied their constitutional right to representation."

C. Point Three: The trial court abdicated its parens patriae responsibility by refusing to allow the children to be independently evaluated.

1. Comments: Trial court decision: (Full argument in PaB51-PaB53)

Plaintiffs maintain that a 45 minute untimely DYFS evaluation is not sufficient to determine the extent of the damage done to the children as a result of two years of sexual abuse, exploitation and other abuses.

There are more than ten (10) references to the matter of an independent evaluation and the need for it in the trial court record. Plaintiffs say an independent evaluation targeted to address the children's reports of abuse by a person trained specifically in this area would have benefited all parties in the investigation, most of all, the children, in that it would have exposed other realities of the

children's home life and determined the possible need for therapeutic treatment.

The Court denied the request and ultimately decided that a 45-minute Champs evaluation was acceptable.

2. Comments: Appellate Court Review

In its decision to affirm, the Appellate court stated: (Appendix A.10):

> **"As the judge noted, the behavior plaintiffs allege was disturbing, but the reports of the professionals who evaluated the children, after being apprised of the allegations, dispelled that concern."**

Here again, the Appellate Court followed the trial court in accepting a 45-minute untimely evaluation as valid and thereby delegating its decision-making authority to an agency (DYFS), when it might have used its discretion to consider whether that evaluation really served the best interest and welfare of the children.

CONSTITUTIONAL AND STATUTORY APPLICATIONS:

The Federal question here is whose interests were served by the denial of an independent targeted evaluation and whether or not this denial barred the children from a remedy for expressing the truth, thus denying them due process and equal protection under the Fourteenth Amendment.

D. Point Four: The Trial court abdicated its parens patriae responsibility by refusing to allow plaintiffs to review DYFS records.

1. Comment: Trial court decision

Plaintiffs' counsel argued that access to DYFS records would be helpful in reviewing the procedures that led to findings and conclusions (2T5:7-2T6:4) both for plaintiffs and an independent evaluator (2T21:5-25).

The Court denied the request(2T22:1-16), thereby preventing plaintiffs from further investigation into DYFS procedures and from obtaining any information regarding DYFS findings, the latter of which is a reporting person's right pursuant to N.J.S.A. 9:6-8.10a.b.(18). Plaintiffs say this denial was to the prejudice of the children and the plaintiffs and has adversely affected plaintiffs' ability to advocate for the children.

2. Comment: Appellate Court Review

The Appellate Court did not discuss this matter except to state that it owed "deference" to the trial court's discretion in this as well as matters concerning "the appointment of guardians, and the desirability of judicial interviews and psychological evaluations of young children" (Appendix A.9).

CONSTITUTIONAL AND STATUTORY APPLICATIONS:

The Federal question here is did the state courts by denying plaintiffs access to DYFS records and findings violate plaintiffs' due process rights to information as reporting persons under N.J.S.A. 9:6-8:10a.b.(18)? Was this denial an abridgement of privileges under the Fourteenth Amendment?

E. Point Five: The trial court abdicated its parens patriae responsibility by refusing to grant temporary custody to the grandfather who with his wife had been primary caretakers of the children since their birth. (full argument in PaB54-PaB58)

1. Comments: Trial court decision

Plaintiffs maintain that the compendium provided to DYFS contained enough evidence of parental abuse and neglect of welfare to have justified the removal of the children long before the issue of

custody was presented to the court. Yet, DYFS did not act to remove the children from their mother's custody, although they could have done so while an "investigation" was in process, thereby protecting them from further harm.

Since the court accepted a verbal from DYFS counsel on DYFS findings (2T42:19-2T:1-3), the court chose not to pursue the custody issue further. The court never asked the question, what decision would be in the children's best interest?

In Section 19.3(1) concerning Infants, case law decided N.J. Super, Ch.1986 provides that:

"Plenary hearing must be held in custody case, especially in situations where serious and long-standing effects on life and well-being of child may result" (Mc v. Mc, 521 A.2d 381, 215 N.J. Super. 132).

The "hearing" on December 5th, 2005 was not a proper hearing as the matter of Defendant MN's continued custody was never properly addressed by the court. Had a trial been scheduled, plaintiffs would have had the opportunity to demonstrate to the court why custody should not remain with the children's mother (2T33:18-2T34:1-9).

In addition, although the trial court had the power according to case law regarding infants (See Callen v. Gill, decided June 11, 1951, Note 5, which cites Infants, NJD 19) to interview the children as to

what their own preferences might be as to matters of their own welfare, the court did not exercise this option.

2. Comments: Appellate Review

Here again, the court delegated its decision-making authority to the lower court and DYFS.
It further implied that plaintiffs' application was not a bonifide application for custody:

"Plaintiffs only mention of a request for custody was by way of checking boxes on a 'form' complaint. The narrative included in the complaint refers to a temporary change in custody pending the DYFS investigations and evaluations (Appendix A.9, footnote 3).

Plaintiffs' understanding is that all custody is "temporary" until final determinations are made. Further, plaintiffs are convinced that their request for "temporary custody" would have lead to a final custody determination in plaintiffs' favor had the court chose to view its intervention as a duty, appointed a Guardian ad Litem and permitted an independent evaluation targeted to sexual abuse.

CONSTITUTIONAL AND STATUTORY APPLICATIONS:

The Federal and state question here concerns whether or not the state courts violated both the Fourteenth Amendment and state statutes as quoted

above concerning infants and directives to courts regarding custody hearings to the prejudice of the children who were not consulted as to what their preference in this matter might be and the reasons they might have for that preference.

F. Point Six: The trial court abdicated its parens patriae responsibility procedurally by issuing an order without having full information on which to base its decision which information was received by the Court on January 6, 2005 and used by the Court to deny plaintiffs' request for a Stay pending Appeal on January 9, 2005. The Court then used a February 22, 2007 Order noting the case as "closed" to misrepresent these facts as demonstrated in the judge's own handwriting. (Full argument PaB58-PaB59)

1. Comments: Trial court decision

On December 5, 2005, the Court did not have all the information it needed to make a final determination (2T39:7-2T43:1-3). In its absence, the Court accepted a verbal from DYFS counsel, then denied the Order to Show Cause in its entirety, although earlier on December 5, 2005, the Court had indicated it did not wish to make a decision without complete information ((2T25:3-9). The Court allowed Defendant MN to leave New Jersey with the minor children a full month before it had the written information to determine the propriety of its decision. On January 9th, 2006, after receiving final

reports from DYFS on January 6, the Court denied plaintiffs' application for a Stay (Appendix C.3-5).

Further, as the plaintiffs' first appeal was dismissed due to the Appellate Court's incorrect interpretation that the trial court's December 5th, 2005 Order was interlocutory, not final, which required that plaintiffs obtain an Order confirming that the December 5th, 2005 Order was final, the Order plaintiffs' then counsel Bonnie Frost, Esq. obtained dated February 22, 2007 was used by both the trial and Appellate Courts to abuse plaintiffs' case and misrepresent facts. (See Appendix C.1-2)

The February 22, 2007 Order incorrectly states in the judge's handwriting that:

> **"This Court having heard the testimony of the parties, reviewed the files regarding the medical reports and DYFS investigation finds same to be consistent with the representations and testimony presented on 12/20/05. OTCS Denied Case closed."**

There were no "representations" or "testimony presented on 12/20/05" as there was no trial. The last court date on the matter was December 5, 2005. The judge's 12/20/05 Amended Order had to do with correcting an incorrect caption (Appendix C.6-11). Yet, the judge writes as if she had reviewed DYFS finding before her December 5th decision when she did not physically have all those findings until after January 6th, 2006.

2. Comments: Appellate Court Review.

The Appellate Court disposed of this point by giving deference to the trial court judge on the matter of making a decision based on a verbal rather than written report. On the matter of the February 22, 2007 Order confirming that the December 5, 2005 Order was final, the Appellate Court used this Order which was a statement about a fact (the fact that the previous December 5, 2005 Order was final) to justify affirming the trial court's decisions and noting incorrectly that

> **"Plaintiffs do not appeal from a final order dismissing their complaint."** (Appendix A.3)

As stated in plaintiffs' Motion for Reconsideration:

> **"To use the Court's 'logic', appellants should have appealed an order that states that another Final Order was final."** (Appendix A. 24).

CONSTITUTIONAL AND STATUTORY APPLICATIONS:

The Federal question here is did the Courts violate the children's Fourteenth amendment rights to due process by allowing for a decision to close the case before having final reports? Also, did the Appellate Court violate plaintiffs' Fourteenth Amendment rights by using the February 22, 2007 Order as a vehicle to affirm the trial court's decisions in an abuse of plaintiffs' good faith, both to the prejudice of the children and the plaintiffs?

Points 7 and 8 are found in Plaintiff's Appellate Brief on PaB, pgs. 59-60 (Point 7) and PaB, pg. 61 (Point 8) and were not dealt with by the trial court. They are also listed in the Appellate Court decision in Appendix A. 8.

III. Reasons for Granting the Petition:

1. The voices of two vulnerable little girls whose constitutional and statutory rights to representation, due process and equal protection have been denied remain unheard in a matter that clearly concerns their best interest and welfare. Plaintiffs say that the best interests and welfare of children are severely compromised when courts participate in further victimizing the children they are mandated to protect.

Plaintiffs say their granddaughters not only suffered three separate reported rounds of sexual abuse, but that they were violated in three specific ways—first by their parents and other adults, second by DYFS which did not remove the children from their mother's custody and which over a two year period did not do a timely evaluation and treated their statements as "hearsay" and thirdly by the Courts.

The trial court found a 45-minute untimely DYFS evaluation acceptable, refused to appoint a Guardian ad Litem to represent the children's best interests, did not allow for an independent evaluation targeted to sexual abuse, and did not consider the seriousness of the children's reports or what their preference for custody might be. The Appellate Court "skipped out" too by not allowing plaintiffs to join DYFS as a third party defendant, by not compelling release of their records/findings so plaintiffs could further support their case and afterwards by stating that because DYFS was not a party, they were not able to review DYFS procedures (Appendix A.8).

The Appellate Court in affirming the trial court's decision also repeated its errors, mainly by delegating its entire decision-making authority to the Division of Youth and Family Services, despite the fact that plaintiffs questioned DYFS procedures and the validity of DYFS's untimely evaluation. Plaintiffs say this was an abuse of discretion which was to the prejudice of children and the plaintiffs as reporting persons—an abuse that elevates

procedures over the best interests and welfare of children.

The Appellate Court could have sent this case below with instructions to compel the joining of DYFS as a third party defendant (or allowed the plaintiffs to do so in accordance with their request) in order that DYFS procedures, records and findings could be examined in the interest of justice being served as regards the best interest and welfare of the children.

The Appellate Court could also have sent this case below with instructions that the trial court appoint a Guardian ad Litem as plaintiffs informed the Court at the time of oral argument that the children are now again residing in New Jersey. Plaintiffs assert that the posture of the court in this entire matter has been to the prejudice of both the children, the plaintiffs and their rights.

2. Children are the most vulnerable members of our society. Issues of representation, independent evaluations, and custody are not simply issues of discretion. They are also issues of accountability. Courts need to be made accountable to the children they serve and that accountability needs to start with listening to children and providing them with a safety net against the competing interests of parents, state agencies and the courts. In the case at hand, a Guardian ad Litem would have served that purpose had the court considered that it was accountable directly to the children themselves.

3. Issues of access to records and findings are also issues of accountability. In the case at hand, denials of access (both courts) and the joining of DYFS as a third party defendant(Appellate court) prevented plaintiffs from pursuing the issue of DYFS's accountability, thereby denying justice to the children.

4. Plaintiffs' case provides for questions of national significance as related to children's rights under the Constitution of the United States of America within the context of the case-specific questions as outlined in the Questions Presented section of this Petition.

5. Plaintiffs say that although this case is about the sexual abuse and exploitation of minor children, there are social issues involved that the courts have not always adequately addressed. More and more, grandparents in our society are raising grandchildren. Those grandparents, like plaintiffs, become "psychological parents" to their grandchildren. Yet, the courts favor parental rights, even when those "rights" are being abused and also used by the courts to "back out" of a proper and thorough investigation of issues that profoundly affect the welfare and best interests of children.

IV. Conclusion:

Where there are substantial conflicting opinions and facts in matters concerning the best interest and welfare of minor children, particularly in cases of allegations of sexual abuse and exploitation, Courts should not be permitted to abuse their discretion by delegating their authority to an agency (DYFS) when it appears that the best interests of children may be subordinated to the interests of that agency and/or the parents.

In this case, the interest of the Courts was to dispose of the matter, so no trial was scheduled; the interest of the custodial parent MN was to leave the State of New Jersey to avoid further investigation and possible criminal prosecution, and the interest of DYFS was to protect itself from scrutiny by requesting that their records not be released to plaintiffs. The interest of the plaintiffs (grandparents), on the other hand, was to save the children from further abuse, which should have been the interest of DYFS and the Courts as well.

If litigants are to develop confidence in the Court system as a whole, the courts must address issues of the use and abuse of judicial discretion in instances where duty, not discretion should rule—cases like this one where the courts should have a duty to investigate challenges to DYFS procedures, not just assume DYFS did its job.

The Court must also address the issue of the rights of children whose voices are left unheard due to the postures and procedures of courts and their agencies and issues wherein the courts favor agencies over and against the rights of children and reporting persons.

The Report of the N.J. Supreme Court Special Committee on Public Access to Court Records, Sect. 2: The Context for Public Access Policy states in 2:1.1 that:

> **"Courts will only be accountable to the public if the record of their work is subject to public scrutiny."**

Plaintiffs assert that this same posture should be applied to agencies of the State/Court (DYFS) in dealing with reporting persons who reported in good faith, regardless of whether those persons are law enforcement officers, teachers, attorneys, or in the case at hand, grandparents.

There is something inherently wrong with a court system that does not permit the voices of children to be heard, that does not take their statements seriously and that denies them their constitutional right to representation. How this unfortunate reality gets fixed in this and in future cases is an issue that needs to be addressed.

Plaintiffs asked on the Appellate level for a summary reversal of the trial court's decision so that the protective measures to insure the children's safety, best interest and welfare could be put in place. They requested that the children be remanded to the custody of their grandfather, plaintiff MN, a Guardian ad Litem be appointed, that DYFS findings be released and that a full investigation be made as to DYFS procedures in this case, so that "no further harm comes to these children" (PaB65).

Plaintiffs now ask the U.S. Supreme Court to examine this case in the light of a constitutional remedy to enforce the rights that have been denied to the children and plaintiffs under the Fourteenth Amendment of the Constitution of the United States.

Date: August 4, 2008

Respectfully submitted,

Marian Nawrocki

Mr. Marian Nawrocki, Pro Se
Plaintiff/Appellant/Petitioner

Barbara R. Williams-Hubbard

Barbara R. Williams-Hubbard, Pro Se
Plaintiff/Appellant/Petitioner

CERTIFICATION

1. We certify that the foregoing statements made by us are true to the best of our knowledge and belief and that if any of the foregoing statements made by us are willfully false, we are subject to punishment.

2. We further certify that our Petition for a Writ of Certiorari in the U.S. Supreme Court is being made in good faith.

Date: August 4, 2008

Respectfully submitted,

Marian Nawrocki

Mr. Marian Nawrocki, Pro Se
Plaintiff/Appellant/Petitioner

Barbara R. Williams-Hubbard

Barbara R. Williams-Hubbard, Pro Se
Plaintiff/Appellant/Petitioner

No.

In The

SUPREME COURT of the UNITED STATES

MARIAN NAWROCKI and
BARBARA WILLIAMS-HUBBARD,

Plaintiffs/Petitioners

v.

MARIA NAWROCKI and
IMMANUEL SMITH,

Defendants/Respondents

On Petition for Writ of Certiorari
To The Superior Court of New Jersey
Appellate Division

APPENDIX A. Appellate Appeal 2.

MARIAN NAWROCKI
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RECORD IMPOUNDED

Not for Publication without the Approval of the Appellate Division

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4067-06T3

M.N and B.W.-H.,

Plaintiffs- Appellants

v.

M.N. and I.S.,

Defendants- Respondents

Argued January 23, 2008 – Decided February 11, 2008

Before Judges Coburn, Fuentes and Grall.

On Appeal from Superior Court of New Jersey, Chancery Division, Family Part
Essex County Docket No. FD-07-2412-06

M.N and B.W.-H, appellants, argued the cause pro se.

M.N. and I.S., respondents, did not file a brief.

PER CURIAM

Defendants M.N. and I.S. have two daughters. Plaintiffs, who are M.N.'s father and stepmother, filed a complaint in the Family Part seeking transfer of custody of the two children from defendants to M.N.'s father. By way of order to show cause filed the same day, and referenced in the complaint, they sought temporary restraints:
1) prohibiting M.N. from leaving the State with the girls until the Division of Youth and Family Services (DYFS) completed a psychological evaluation of the children;
2) prohibiting M.N. from leaving the State until completion of the evaluation;
3) allowing plaintiffs to secure an independent evaluation;
4) directing DYFS to investigate conditions in M.N.'s home;
5) appointing a guardian for the children; and
6) awarding custody to M.N.'s father pending the evaluations.

On October 31, 2005, a judge of the Family Part restrained M.N. and the children from leaving New Jersey prior to completion of the evaluations. When the evaluations and the DYFS investigation were complete, the judge reviewed the DYFS file in camera, dissolved the restraints and denied any additional restraints. Plaintiffs' prior appeal from that order was dismissed as interlocutory. M.N. and B.W.-H. v. M.N. and I.S., No. A-3574-05 (App. Div. Nov 6, 2006).

A final order dismissing plaintiffs' custody litigation was entered on February 22, 2007.

Plaintiffs now appeal from orders denying temporary relief, which were filed on December 5 and 20, 2005, and January 10, 2006.[1] They do not appeal from the final order dismissing their complaint.[2] For reasons stated below, we affirm.

The following facts are drawn from plaintiffs' submissions on the order to show cause, the DYFS file that the trial judge reviewed in camera and the transcripts of the hearings conducted in the Family Part. M.N. and I.S. were married in September 1999. Plaintiffs were married in November 1999. M.N. and I.S. have two daughters; defendants were living in plaintiffs' home when their children were born. Their first daughter was born in June 2000 and the second in November 2001. M.N. and her family left plaintiffs' home in November 2002.

In response to a report of suspected abused filed by plaintiffs in July 2003, a DYFS worker visited M.N.'s home. She also contacted the children's pediatrician.

During the summer of 2003, M.N. and the children returned to live with plaintiffs. They left at the end of the summer and neither M.N. nor the children have lived in plaintiffs' home since that time.

---

[1] The order of December 5, 2005, is a denial of the order to show cause and, in effect, vacates the temporary restraints. The caption on that order misstated the parties, and the order of December 20, 2006, simply corrects that error. The order filed on January 10, 2006, is a denial of restraints pending appeal.

[2] Plaintiffs' amended notice of appeal was filed on April 23, 2007. It states: "Order 2/22/07 (closing case not being appealed)."

For a time, M.N. maintained contact between plaintiffs and her children. The children visited with plaintiffs and, according to plaintiffs frequently and regularly stayed overnight.

Plaintiffs allege that starting in October 2003, they observed the girls engaging in behavior that they viewed as indicative of abuse or exposure to inappropriate conduct. Upon noticing redness around one of the girl's vagina, plaintiffs reported their suspicions to DYFS. DYFS arranged for the children to be examined by a doctor, who found no evidence of infection and recommended an evaluation by the staff of the Children's Hospital Abuse Management Program (CHAMP). In August 2004, a psychologist who evaluated the children concluded that there was no evidence of prior abuse and no need for therapy of any sort. On October 6, 2004, a doctor who examined both children found no basis for concern about abuse or neglect. Caseworkers employed by DYFS visited M.N.'s home on numerous occasions. DYFS concluded that the children were not at risk of harm and that there was no evidence of abuse.

According to plaintiffs, beginning in June 2005, M.N. declined to permit the children to visit them without supervision. Plaintiffs again asked DYFS to act. After interviewing the children on June 27, 2005, a caseworker for DYFS concluded that the allegations were unfounded.

On July 31, 2005, plaintiffs' attorney wrote a letter to the Attorney General voicing plaintiffs' dissatisfaction with DYFS's response to their concerns. The attorney provided a "compendium" that plaintiffs had prepared, which detailed the

family history and their observations and interpretations of the children's behavior.

In August 2005, plaintiffs were advised that DYFS had scheduled appointments for CHAMP evaluations in October. The medical examination was done on October 11, 2005. The doctor concluded that, given the children's physical condition, it was unlikely that either had been abused.

On October 28, 2005, plaintiffs learned that M.N. was planning to move with her daughters from New Jersey to another state. On October 31, 2005, as previously noted, they commenced this litigation, filed an order to show cause, and obtained an order restraining M.N. and the children from leaving New Jersey until DYFS completed its investigation.

DYFS proceeded with its investigation. Between June 28 and November 1, 2005, caseworkers visited M.N.'s children many times and never found any basis for concern. Psychologists for CHAMP evaluated the children on November 1, 2005. They found the children to be well-adjusted and not in need of any therapeutic services.

On November 29, 2005, the judge heard argument on continuation of the restraints on M.N.'s departure from New Jersey and the additional relief plaintiffs requested in their order to show cause. Attorneys representing plaintiffs, M.N. and DYFS appeared. The judge was advised that DYFS had completed its investigation and concluded that the allegations of abuse were unsubstantiated. The judge directed DYFS to submit its file to the court for in camera review.

Plaintiffs' attorney asked the judge to appoint a guardian and continue the temporary restraints against M.N.'s contemplated move from New Jersey,

in order to permit the children to attend appointments in mid-January for another evaluation by plaintiffs' expert. The judge denied both requests pending her review of the DYFS file and a hearing on December 5, 2005.

By December 5, 2005, the judge had reviewed the DYFS file and all reports other than the report of the results of final medical examinations. DYFS had an oral report from the doctor but had not yet obtained a written report. DYFS was awaiting receipt of the doctor's written report before formally closing its investigation.

Subject to DYFS providing the written report on the final medical examination and documentation of its decision to close the investigation, the judge dissolved the restraints and denied plaintiffs' requests to appoint a guardian and compel the children to submit to another evaluation by plaintiffs' psychologist. Noting the presumption favoring M.N. as the natural parent of these children and the absence of any psychological or medical evidence suggesting abuse of the sort alleged, the judge denied any further relief. On January 6, 2006, DYFS provided the doctor's written report and a document memorializing the agency's determination that the allegations of abuse were unfounded and the family was not in need of services.

On this appeal plaintiffs present the following arguments:

I. THE TRIAL COURT ABDICATED ITS PARENS PATRIAE RESPONSIBILITY BY NOT QUESTIONING DYFS PROCEDURES AND THE

VALIDITY OF DYFS UNTIMELY EVALUATION AND BY IGNORING ITS OWN CONCERNS.

II. THE TRIAL COURT ABDICATED ITS PARENS PATRIAE RESPONSIBILITY BY CENSORING THE VOICES OF THE CHILDREN, DENYING THEM THEIR RIGHT TO BE HEARD AND THEIR RIGHT TO REPRESENTATION.

III. TRIAL COURT ABDICATED ITS PARENS PATRIAE RESPONSIBILITY BY REFUSING TO ALLOW THE CHILDREN TO BE INDEPENDENTLY EVALUATED.

IV. THE TRIAL COURT ABDICATED ITS PARENS PATRIAE RESPONSIBILITY BY REFUSING TO ALLOW PLAINTIFFS TO REVIEW DYFS RECORDS.

V. THE TRIAL COURT ABDICATED ITS PARENS PATRIAE RESPONSIBILITY BY REFUSING TO GRANT TEMPORARY CUSTODY TO THE GRANDFATHER WHO WITH HIS WIFE HAD BEEN PRIMARY CARETAKERS OF THE CHILDREN SINCE THEIR BIRTH.

VI. THE TRIAL COURT ABDICATED ITS PARENS PATRIAE RESPONSIBILITY PROCEDURALLY BY ISSUING AN ORDER WITHOUT HAVING FULL INFORMATION ON WHICH TO BASE ITS DECISION WHICH INFORMATION WAS RECEIVED BY THE COURT ON JANUARY 6, 2006, AND USED BY THE COURT TO DENY PLAINTIFFS REQUEST FOR A STAY PENDING APPEAL ON JANUARY 9, 2006. THE COURT THEN USED A FEBRUARY 22, 2007 ORDER

NOTING THE CASE AS "CLOSED" TO MISREPRESENT THESE FACTS AS DEMONSTRATED IN THE JUDGE'S OWN HANDWRITING.

VII. THE TRIAL COURT ABDICATED ITS PARENS PATRIAE RESPONSIBILITY BY PERMITTING THE MOTHER TO LEAVE THE STATE OF NEW JERSEY WITHOUT REQUIRING THAT SHE GIVE THE COURT OR THE GRANDPARENTS A FORWARDING ADDRESS SO THAT CONTACT WITH THE CHILDREN COULD BE MAINTAINED.

VIII. THE TRIAL COURT DID NOT CONSIDER THAT THE ESSEX VICINAGE MAY NOT HAVE BEEN THE PROPER VICINAGE FOR THIS MATTER DUE TO A PRIOR ORDER IN A PASSAIC COUNTY COURT.

After review of the record, including the records submitted by DYFS for in camera review, we are convinced that the arguments lack sufficient merit to warrant discussion in a written opinion beyond the brief comments that follow. R. 2:11-3 (e) (1) (E)

DYFS was not a party to this action. Review of the action or inaction of a state agency is the responsibility of this court not the trial court. R. 2:2-3(a)(2); Selobyt v. Keough-Dwyer Corr. Facility of Sussex County, 375 N.J. Super. 91, 95 (App. Div. 2005). The question of the manner in which DYFS proceeded, which is raised in Point I, is not before us on this appeal from an order of the Family Part.

In reviewing the arguments raised in Points II through VI of plaintiffs' brief, we must give deference to the special jurisdiction of the Family Part and the expertise of its judges. Cesare v. Cesare, 154 N.J. 394, 413 (1998); DeVita v. DeVita, 145 N.J. Super. 120, 123 (App. Div. 1976); Sheehan v. Sheehan, 51 N.J. Super. 276, 295 (App. Div.): certif. denied, 28 N.J. 147 (1958). The deference we owe extends to discretionary decisions about access to DYFS records, appointment of guardians, and the desirability of judicial interviews and psychological evaluations of young children. See N.J.S.A. 9:6-8.10a; R. 5:3-3; R. 5:8B(a); R. 5:8-6.

There is no basis for concluding that this judge abused her discretion or misapplied the controlling legal principles by refusing to appoint a guardian, compel additional evaluations, disclose DYFS files or interview the children. The evidential materials submitted to the trial judge did not raise a genuine factual issue about plaintiffs' status as psychological parents. See V.C. v. M.J.B., 163 N.J. 200, 205-06, 227-28, cert. denied, 531 U.S. 926, 121 S. Ct. 302, 148 L. Ed.2d 243 (2000); P.B. v. T.H., 370 N.J. Super. 586, 595-97 (App. Div. 2004). Moreover, even when read liberally, plaintiffs' pleadings appear to request temporary relief pertinent to and pending a determination about the abuse they alleged. [3] Thus, the narrow question was whether further

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[3] Plaintiffs only mention of a request for custody was by way of checking boxes on a "form" complaint. The narrative included in the complaint refers to a temporary change of custody pending the DYFS investigation and evaluations.

[4] Plaintiffs did not invoke N.J.S.A. 9:6-8.34(a), (d), which authorizes parties with information about abuse or neglect of a child to commence an action.

interference with M.N.'s parental rights was warranted on the basis of plaintiffs' allegation of abuse. [4]

Given the extent of the DYFS investigation and the opinions of the qualified experts who examined and evaluated the children, the judge did not err in concluding that additional interference with M.N.'s plans to move was unwarranted. See V.C., supra, 163 N.J. at 218 (discussing interference with parental rights warranted by abuse). As the judge noted, the behavior plaintiffs alleged was disturbing, but the reports of the professionals who evaluated the children, after being apprised of the allegations, dispelled that concern.

The arguments raised in Points VII and VIII were not raised below. For that reason, we will not consider them on appeal. Nieder v.Royal Indem Ins. Co., 62 N.J. 229, 234 (1973).

Affirmed

I hereby certify that the foregoing is a true copy of the original on file in my office
Signed: John M. Chacko
Clerk of the Appellate Division.

A-4067-06T3

A-4067-06T3

RECEIVED
APPELLATE DIVISION

MARCH 6, 2008

SUPERIOR COURT
OF NEW JERSEY

ORDER ON MOTION

MN ET AL
VS
MN ET AL

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004067-06T3
MOTION NO. M-003469-07
BEFORE PART: C
JUDGES (s): COBURN
FUENTES
GRALL

MOTION FILED: FEBRUARY 20, 2008 BY: MN
ANSWER (S) FILED:

SUBMITTED TO COURT: FEBRUARY 27, 2008

IMPOUNDED

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 3-RD OF MARCH 2008, HEREBY ORDERED AS FOLLOWS:

GRANTD DENIED OTHER
( ) (X) ( )

MOTION BY APPELLANT
- FOR RECONSIDERATION
- FOR CLARIFICATION

SUPPLEMENTAL:

FILED
APPELLATE DIVISION

MARCH 06 2008

S/John M Chacko
CLERK

ESX FD-07-2412-06 FOR THE COURT:

S/DONALD S. COBURN
P.J.A.D.

I hereby certify that the foregoing is a true copy of the original on file in my office

s/John M. Chacko
CLERK OF THE APPELLATE DIVISION

APPELLANT/PLAINTIFF, Mr. Marian Nawrocki, Pro Se
APPELLANT/PLAINTIFF, Barbara Williams-Hubbard, Pro Se
P.O. Box 4806, Clifton, NJ 07015
165 Lincoln Ave, Clifton, NJ 07011
973-478-7058

MARIAN NAWROCKI and BARBARA WILLIAMS-HUBBARD

Plaintiffs

vs.

MARIA NAWROCKI and IMMANUEL SMITH

Defendants.

SUPERIOR COURT OF NEW JERSEY
DOCKET NO. A-4067-06T3

CIVIL ACTION

NOTICE OF MOTION FOR RECONSIDERATION AND CLARIFICATION ON APPELLATE AFFIRMATION WITHOUT OPINION

FILED
APPELLATE DIVISION
FEBRUARY 20, 2008
s/John M. Chacko
CLERK

TO: The Honorable Michelle Hollar-Gregory
Superior Court of New Jersey
Walentz Justice Complex
212 Washington Street, Suite 922
Newark, New Jersey 07012

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M-3469-07

PLEASE TAKE NOTICE that the undersigned hereby moves before the Superior Court of New Jersey, Appellate Division for RECONSIDERATION and CLARIFICATION of the Appellate Court's February 11th, 2008 decision to affirm without opinion on plaintiffs' Appeal of Orders signed by Hon, Michelle Hollar-Gregory on December 5th, 2005 (Amended 12/20/05) and January 9, 2006, said Orders which denied plaintiffs' relief concerning the welfare of their minor granddaughters as requested in the Order to Show Cause/Verified Complaint signed by the Hon. Michelle Hollar-Gregory on October 31, 2005, and said December 5th, 2005 Order for which the plaintiffs applied for a STAY PENDING APPEAL to the Superior Court of NJ. Family Part: Essex County on December 21, 2005 (denied January 9th, 2006), said Order of December

5, 2005 (Amended 12/20/05), which was confirmed to have closed this matter by a later Order confirming same filed February 22, 2007.

In support of this Motion, the APPELLANTS/ PLAINTIFFS, Marian Nawrocki and Barbara Williams-Hubbard, applying Pro Se, rely upon the accompanying letter brief with exhibits.

No oral argument is requested unless the adversary objects.

Respectfully Submitted,

s/Mr. Marian Nawrocki
APPELLANT/PLAINTIFF

s/Ms. Barbara Williams-Hubbard
APPELLANT/PLAINTIFF

DATE: February 18, 2008

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February 18, 2008

Honorable Judges of the Appellate Division
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625-006

Re: Motion for Reconsideration and Clarification of Appellate Court's February 11th, 2008 decision to affirm without opinion.

In the matter of : Appeal from 12/5/05(Amended 12/20/05), 1/9/06 decisions of The Hon. Michelle Hollar-Gregory, J.S.C., Chancery Division: Family Part, Essex County, said 12/5/05 Order confirmed as final by Order confirming same filed February 22, 2007.

Marian Nawrocki and Barbara Williams-Hubbard, Appellants/Plaintiffs
vs. Maria Nawrocki and Immanuel Smith, Defendants
Appellate Docket No: A-4067-06T3

Dear Judges:

Kindly accept this letter brief in support of Appellants' Motion for Reconsideration and Clarification of the Appellate Court's February 11th, 2008 decision to affirm without opinion in the above referenced matter. The substance of this letter brief is exclusively intended to set forth Appellant's request for reconsideration and clarification of the Court's February 11th, 2008 decision and Appellant's argument that the Court's affirmation without opinion is predicated on:

February 18, 2008, Page 2
1. an incorrect recitation and interpretation of facts

2. a discretionary use of process favoring the trial court without dutiful concern for that court's judgment in matters related to DYFS procedures and the issue of protective measures the Court could have allowed to insure the best interests and welfare and safety of Appellants' minor granddaughters, said measures if put in place would likely have effected a change in custody.

3. an incorrect interpretation of Appellants' posture as to custody and possibly also Appellants' evidentiary status as "psychological parents."

4. the Appellate Court's presentation of circular arguments demonstrating a possible lack of good will to assign merits to this case when it specifically involves the alleged sexual abuse and exploitation of minor female children.

5. an irrational failure to recognize that Appellants as reporting persons (Mr. Nawrocki as the grandfather and his wife, Ms. Williams-Hubbard as both a "psychological parent" and an Elder in her church) in accordance with N.J.S.A. 9:6-8.34(a), (d) who brought this action to the Court in good faith expecting that the Court would employ its discretion as a duty to help so as to prevent further harm to the children.

This letter brief is not intended to completely reiterate

the substantive arguments already set forth in Appellants' Appellate Brief, but to help the Appellate Court recognize and review what Appellant's assert are errors of the Court in this matter, said errors and corrections which would require the Court to further clarify and justify its affirmation and perhaps reconsider its decision.

Therefore, the clarification and reconsideration of the Court is requested as this matter concerns the welfare and best interest of two minor female children (now 7 and 6) who identified both their parents and other adults in their life as perpetrators of acts of sexual abuse, exploitation and aggression against them, two children whose voices remain unheard and whose constitutional rights to representation have been set aside and ignored.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Appellants rely on the facts and procedural history set forth in their Appellate Brief as if set forth at length herein.

LEGAL ARGUMENT

The Appellate Court's decision of February 11, 2008 affirmed the trial court's decision without opinion due to the Appellate Division's interpretation that Appellants were not appealing a final Order (Pa1-Pa3,Pa184-Pa185)[2] and the Division's assertion that it could not review the procedures of the Division of Youth and Family Services in this case because same was not a joined party to Appellants' Complaint. Accordingly, the Court concluded incorrectly that Appellants were appealing from Orders that were temporary restraints dismissed when the conditions of same were met, that Appellants' complaint was not a bonifide complaint for custody, and that the trial court acted appropriately in using its discretion to not examine DYFS procedures in this matter and to not release DYFS records or findings to Appellants who were the reporting persons in this

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[2] "Pa1-Pa3,Pa184-Pa185" refers to Appendix to Appellants' Appellate Brief.

case, to not permit an independent evaluation or provide a measure of protection for the children (a Guardian ad Litem) even though the trial court had before it a substantive conflict of fact and opinion between the Appellants and DYFS which would require that the children have their own representation (N.J.S.A. 30:4C-12 Note 8; Doe v. State, Dept. of Human Services, Div. of Youth and Family Services, 165 N.J. Super. 392 398 A.2d 562 (A.D. 1979).).

Appellants assert that the Appellate Court's decision consists of an incorrect recitation and interpretation of facts, and circular arguments in disregard of law and fact, clearly demonstrating a discretionary use of process favoring the trial court without dutiful concern for that court's judgment in not reviewing DYFS procedures, not questioning the validity of an untimely evaluation and not releasing its records/findings, appointing a Guardian ad Litem or allowing an independent evaluation targeted to sexual abuse, or addressing the issue of custody, thus and thereby preventing a trial on merits which would likely have effected a change in custody.

R. 2:11-6 permits a party to apply to the Appellate Division within ten (10) days of the Appellate Division's entry of a judgment or Order for reconsideration of judgment. The movant in a motion for reconsideration has the burden of

demonstrating that the court either (1) expressed its decision based upon a palpably incorrect or irrational basis, or (2) failed to appreciate the significance of probative, competent evidence. Michel v. Michel, 210 N.J. Super. 218, 224-25 (Ch. Div. 1985).

First, on pages 2 and 3 of its decision (and footnotes 1 and 2), the Appellate Court states that Appellants are appealing from Orders that denied temporary relief, not "the final Order" (of February 22, 2007) "dismissing their Complaint." The Court fails to recognize that the February 22, 2007 Order is only an Order stating that the previous Order of December 5, 2005 (Amended 12/20/05) was final and as such, is a statement **about a fact**, that fact being that the December 5, 2005 Order (Amended 12/20/05) was final, except for that part of the February 22, 2007 Order where the judge in her own handwriting incorrectly notes that she had "reviewed the files regarding the medical reports and DYF investigation and finds same consistent with the representations and testimony presented on 12/20/05," when there was no "testimony of the parties" on that date as the last court date on the matter took place on December 5, 2005 and no trial was ever scheduled.

The February 22, 2007 Order was prepared by Appellant's second counsel in this matter (Ms. Frost) only to correct the

fact that Appellant's counsel (Ms. McArdle) at the time of the filing of the Order to Show Cause/Verified Complaint on October 31, 2005 apparently did not take directions from the court to prepare a final Order memorializing the trial court's decisions on December 5, 2005, thus causing Appellant's first appeal to be dismissed on the false predication that the judge's December 5, 2005 Order was interlocutory, not final. There was no court appearance on February 22, 2007 as this Order stating the previous Order was final was strictly through the mail.

For the interest of justice at the time, the Appellate Court could have proceeded with Appellants first appeal on its merits by use of its own broad discretion and/or duty; it did not. In this second Appeal, the Court now uses this February 22, 2007 Order in a circular argument that clearly shows it favors an imperfect due process over merits which Appellants interpret as an abdication of its parens patriae responsibility concerning the welfare and best interest of children who are likely to suffer irreparable harm as a result of the posture of this Court.

To use the Court's "logic", Appellants should have appealed an Order that states that another earlier Final Order was final. Appellants fail to see the "logic" and therefore, request clarification.

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In addition, the Appellate Court errs in its interpretation that all Appellant's requests in their Order to Show Cause/Verified Complaint were temporary restraints. Appellants assert that it is irrational for the Court to "label" Appellants' request for a Guardian ad Litem "temporary." This was a request for a protective measure for the children. This request was denied by the trial court solely because of convenience, i.e., the mother wanted to leave the State. The best interest and welfare of the children was not considered. As a result, the children were denied their constitutional right to representation in a matter concerning their own lives and welfare which Appellants interpret as a violation of (N.J.S.A. 30:4C-12 Note 8; Doe v. State, Dept. of Human Services, Div. of Youth and Family Services, 165 N.J. Super. 392 398 A.2d 562 (A.D. 1979).).

The Court further states (on pages 8 and 9 of its decision) that "DYFS was not a party to this action. Review of the action or inaction of a state agency is the responsibility of this Court not the trial court" citing R. 2:2-3(a)(2); Selobyt v. Keough-Dwyer Corr. facility of Sussex County, 375 N.J. Super. 91, 95 (App. Div. 2005). Therefore, the Court disposes of Point I of Appellants' Argument (pgs. 42-45 of Appellants' Appellate Brief) which questions DYFS procedures and

the validity of DYFS's untimely evaluation.

The Appellate Court fails to recognize that Appellants had an attorney at the time of the filing of their Complaint. Appellants' Order to Show Cause/Verified Complaint was prepared by counsel. Appellants later recognized that counsel should have joined DYFS as a third party defendant at time of filing because of the issue raised by Appellants concerning DYFS procedures, just as counsel should have prepared an Order memorializing the trial Court's December 5, 2005 (Amended 12/20/05) decision as final. Appellants assert that this case and the children should not have to suffer because of counsel's errors/omissions which the Court in its broad discretion has the power to correct.

The Appellate Court also seems not to recall that Appellants (once they realized counsel's error), attempted to correct same by applying to the Appellate Court by Motion filed on August 13, 2007, requesting that the Appellate Court by its own Motion join DYFS as a third party defendant and compel release of DYFS records/findings to them while the appeal was pending or, in the alternative, to grant them permission to change the trial court

venue for purposes of same. The Appellate Court denied this Motion in its entirety on September 10, 2007. The Appellate Court might have used it discretion

perhaps citing the Writ of Coram Nobis to join DYFS as a third party because of the issues of DYFS procedures Appellants brought before both the trial Court and this Court; it did not.

Appellants' motivation in the above referenced Motion was the same as set forth in the record of the trial court and Appellants' Argument on this matter in both their first and second appeals--that as reporting persons with information on the sexual abuse of children, they reported this abuse in keeping with N.J.S.A. 9:6-8.34 (a), (d), but have been denied their right as reporting persons to records and findings pursuant to N.J.S.A. 9:6-8.10a.b (18).

Appellant's counsel at the time asked for these records on the trial court level and was denied. Both the trial court and the Appellate Court have reviewed these records and findings in camera. Without pointing out numerous errors in the Appellate Court's narrative page by page, Appellants' reading of the Appellate Court's recitation of certain "facts" in these records is inconsistent with Appellants' knowledge of and experience with DYFS procedures in this case, demonstrating to Appellants that DYFS records have either been doctored in the two years since Appellants commenced their first appeal, and/or that DYFS was given incorrect information by the parties interviewed in this matter.

February 18, 2008, Page 13

Appellants cannot adequately defend their position concerning DYFS procedures and findings (which conflict substantially with Appellants' knowledge of facts) unless they are permitted access to DYFS records. That access, of course, is unlikely unless DYFS is a party to this action. Again, the Appellate Court denied Appellant's Motion to Join, et.al.

The issue of DYFS procedures was raised in the trial court on Appellant's assertion that after allegations of sexual abuse, DYFS never removed the children from their mother's care and that DYFS's evaluation was untimely (two years after Appellants' first reports in October, 2003 and over four (4 months after Appellants' last reports presented to DYFS with their written Compendium in June, 2005) In addition, in October, 2003 an examining doctor at Beth Israel, Newark recommended an evaluation for sexual abuse. This evaluation was not performed until it was forced by Appellants' October 31, 2005 Order to Show Cause/Verified Complaint and again, it took place on November 1, 2005--the day DYFS was served with the Complaint. The untimeliness of the DYFS evaluation raised issues as to its validity which the trial court never addressed. In not addressing these issues in the form of a proper hearing, the trial court conveniently abdicated its decision-making authority by giving same over to DYFS when at the very least it

February 18, 2008, Page 14

should have questioned DYFS procedures to satisfy the legitimate concerns of the Appellants. Appellants concerns should have been the court's concerns as

this matter relates to the welfare and best interest of minor children.

Hence, the Appellate Court has opted to use its discretion to repeat the errors of the trial court.

Restated, the trial court used its discretion to affirm DYFS procedures and findings and did not consider that it had a duty to examine the procedures that led to the findings, despite Appellants urgent raising of that issue through counsel. Appellants assert that an objective examination of DYFS procedures beyond even the obvious would have likely led to the joining of DYFS as a third party defendant. The trial court, therefore, was biased.

Here, clearly the Appellate Court is biased as well, leaving the Appellants to suffer discrimination against their good faith as reporting persons and Pro Se litigants, and the children to suffer from the errors of counsel and both courts by the court's use of discretion over duty or, in other words, the Court's concern for due process over and against its concern for children.

Appellants' reassert that the welfare and best interest of the children have been subordinated to the interests cf the

parents, the Division of Youth and Family Services and the Courts.

The Appellate Court denied Appellants' Motion to join DYFS as a third party defendant, thus preventing them from an examination of DYFS records and findings. Now, the same Appellate Court uses the argument that DYFS is not a party to this action and that it cannot therefore evaluate DYFS procedures, although if DYFS were a party to

the action, it would have the authority to review its procedures. Appellants assert that this is yet another use of discretion over duty.

Appellants assert that the Appellate Court in its broad discretion likely has the power by Writ of Mandamus to compel officials and the trial court to exercise their discretion as a duty, not simply as a ministerial act. Appellants assert that the Appellate Court could have sent this case below with instructions to compel the joining of DYFS as a third party defendant and to compel the trial court to look into DYFS procedures and release its records/findings to Appellants in the interest of justice being served as regards the welfare and best interest of the children.

As to the matters of custody and evidential materials of Appellants' status as "psychological parents" as raised by the Appellate Court on pages 9-10 and the Court's citations

in the text and footnotes of its commentary, Appellants assert that the Appellate Court has an incorrect interpretation as to Appellants' posture in these matters. Appellants request for custody was a result of the children's circumstances.

Appellants did not apply for custody (to the grandfather) just for custody's sake, but out of concern for the lives and welfare of the children. When not with the Appellants, the children were living in a situation of domestic violence and drugs. Their verbalizations and behaviors were indicative (according to child sex abuse experts Appellants consulted) of sexual abuse and exploitation. The children themselves identified their parents and other adults in their lives as perpetrators against

them of these activities, all of which were reported to DYFS over a two year period and lastly in June of 2005 by their call with an attorney to the DYFS hotline and the presentation to DYFS of a 40 page Compendium with details of the children's verbalizations and behaviors, etc.
Appellants are convinced that "temporary custody" would have lead to a final custody determination in Appellant's favor had the Court chosen to view its intervention as a duty, appointed a Guardian ad Litem and permitted an independent evaluation targeted to sexual abuse. And here, Appellants assert again that because DYFS did not remove the children from

their mother's care after Appellants' June, 2005 reports, the divorced parents had ample time to torture their children into silence as their mother was taking the children to jail to visit their father (incarcerated for violation of probation) over and against her own restraining Order. Appellants compendium provided evidence that the children were being threatened.

As to "evidentiary materials" of Appellant's status as psychological parents, Appellants say that the Compendium contains ample evidence of same. In addition, Maureen Crost of DYFS who visited Appellants' home in October, 2003 and approved their home for possible custody could attest to the fact of the children's attachment to Appellants.
The Appellate Court errs in not recognizing Appellant's home as the children's birth home and as the place where they spent over 60% of their time even after their parents established their own multiple homes, the majority of which failed.

Appellant BWH, in fact, took the children to school over half the time when F. started pre-school in September, 2004, and the children stayed at Appellants' home, living there for days at a time over 60% of the time from the time they left in November, 2002 up through June of 2005 and for three months again full-time during the summer of 2003. The children's

earliest friendships were through Appellants' neighborhood and churches. Appellants M.N and BWH shared child care as parents would. Appellants assert that one of the best testimonies to Appellants' "psychological" parenthood was the fact that the children (despite their being threatened by their parents) shared and spontaneously demonstrated to Appellants verbalizations and behaviors concerning the sexual abuse and exploitation they were experiencing. They took this risk of trust, even though they were clearly told by their parents that should they share these thing with their grandparents, they would never see their grandparents again.

A further evidence of Appellants' psychological parenthood was evidenced by the mourning of the children when their mother began to withdraw them from Appellants' care. They mourned the loss of the company of their grandparents, the Appellants, the safety of their birth home, and all they had known and loved since birth—friends, church relationships, places, people and activities. For some reason, DYFS did not seem to find that the mother's actions were psychologically torturous to the children which is beyond Appellants' understanding.

The Appellate Court (page 4) implies that Appellants took the action of their June, 2005 reports to DYFS in response to the mother's withdrawal of the children from Appellants' care.

February 18, 2008, Page 19

This was not the case. Appellant's action in their reports to DYFS in June, 2005 was contemplated and prepared for months before Defendant M.N., the mother, began to withdraw the children from Appellants' care and permit them to see the children only with supervision. In fact, the mother suspected the possibility of new reports when on April, 10, 2005 she called a meeting with Appellants to try to discover from them what her children might have told them about her involvement in the sexual abuse and exploitation of her own daughters. See the narrative of this conversation in Appellants' Compendium (Pa85-Pa86). The mother's later withdrawal of the children was directly related to things she suspected the children had shared with Appellants. Appellants' reports to DYFS were not a result of M.N.'s withdrawal of the children from Appellants' care as the Court seems to imply.

Appellant's trial court counsel used and explained her use of the term "psychological parents" in her arguments on December 5, 2005 (2T7:1-2T8:1-5). Appellants explained their use of the term on page 41 of Appellants' Appellate Brief. As to any further evidentiary materials, Appellants were not interviewed by DYFS after their June, 2005 reports (except for Appellant's initiation of contacts re: progress)and were not interviewed as caretakers by Dr.Patricia Morgan Glenn at Beth Israel, Newark

February 18, 2008, Page 20
when the DYFS evaluation finally took place on November 1st, 2005. This was another error of DYFS in violation of rules governing their procedures in investigations under Chapter 129A (Subchapter 2.10:129A-2.3).

Thus, due to the circumstances (the court not ordering a Guardian ad Litem or permitting an independent evaluation and DYFS failure to include Appellants as part of their later evaluation) no test as to formally concur with Appellants' "psychological parenthood" was performed. However, Appellants assert that they would have qualified under each of the four (4) elements prescribed in V.C., supra, 163 N.J. at 223 as noted in P.B. v. T.H., 370 N.J. Super. 586, 595-97 (App. Div. 2004) had those elements been applicable in Appellants' case.

Had the trial court set this matter for trial and issued measures to protect the children (a Guardian ad Litem, independent evaluation and temporary custody to the grandfather until a final custody determination could be made, etc.) as Appellants requested, Appellants assert that same would have provided an opportunity for the welfare and best interests of the children to be served. Of course, none of this occurred and in this way, Appellants assert that the trial court judge abused her discretion.

February 18, 2008, Page 21

CONCLUSION

Appellants have acted in good faith throughout this litigation and appeal. Considerations of fairness and justice warrant an allowance for reconsideration and clarification.

In this instance, the Appellate Court concluded incorrectly that Appellants were appealing from Orders that were only temporary restraints. The Appellate Court also appears to conclude incorrectly that Appellants Complaint was not a bonifide Complaint for Custody. Further, the Appellate Court fails to appreciate the significance of probative, competent evidence that would demand duty over discretion in the exercise of its authority over decisions of a trial court that absolves itself of responsibility by giving up its decision-making authority to DYFS in lieu of considering the question of what really would be in the best interest and welfare of children.

If Appellants are incorrect in their interpretation of the Appellate Court's decision, then that decision requires clarification. Specifically, Appellants request clarification on the court's argument re: the February 22, 2007 Order, on why the Court chose to use the words "exposure to inappropriate conduct" when Appellants clearly reported conduct indicative of sexual abuse (as confirmed by experts in the field of child sexual abuse), and why the Court would not itself join DYFS

February 18, 2008, Page 22

as a third party defendant in this matter or permit Appellants to do so as Appellants requested or allow for Appellants request for DYFS records and findings which the Court itself reviewed <u>in camera</u>.

Also, Appellants request clarification on why the Court has taken the position that Appellants' argument is "without sufficient merit to warrant discussion in a written opinion beyond the brief comments that follow" (Appellate Court Decision, pg.8).

Further, if Appellant's argument as set forth above has merit apart from the posture of the Appellate Court's decision, then Appellants assert that the Appellate Court has a duty to reconsider its decision in the light of its parens patrie responsibility as to the welfare and best interest of the children who may have already suffered irreparable harm as a result of the court's use of discretion over duty in not holding DYFS and the trial court responsible for actions that denied the children the measures of protection which are their right.

Respectfully submitted,

_____

Mr. Marian Nawrocki, Pro Se
Plaintiff/Appellant

Date: February 18, 2008

_____

Barbara Williams-Hubbard, Pro Se
Plaintiff/Appellant

A-4067-06T3

IMPOUNDED

ORDER ON MOTION

	SUPERIOR COURT OF NEW JERSEY
MARIAN NAWROCKI ET AL	APPELLATE DIVISION
VS	DOCKET NO.
MARIA NAWROCKI ET AL	A-004067-06T3
	MOTION NO.
	M-007233-06
	BEFORE PART: C
	JUDGES: FUENTES
	GRALL

MOTION FILED:
AUGUST 22, 2007 BY: MARIAN NAWROCKI
ANSWER(S) FILED:

SUBMITTED TO COURT: SEPTEMBER 10, 2007

RECEIVED
APPELLATE DIVISION
SEPT 13 2007
SUPERIOR COURT
OF NEW JERSEY

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 10th OF SEPTEMBER, 2007, HEREBY ORDERED AS FOLLOWS:

GRANTED	DENIED	OTHER
( )	(X)	( )

MOTION BY APPELLANT

- FOR CUSTODY/ GUARDIANSHIP OR VISITATION PENDING APPEAL AND TO CHANGE TRIAL COURT VENUE
- FOR REMAND

SUPPLEMENTAL:

FILED
APPELLATE DIVISION

SEPTEMBER 13, 2007

S/John M. Chacko
CLERK

ESX FD-07-2412-06

FOR THE COURT:

S/ JOSE L. FUENTES J.A.D.

I hereby certify that the foregoing is a true copy of the original on file in my office

---

s/John M. Chacko
CLERK OF THE APPELLATE DIVISION

A-4067-06T3

IMPOUNDED

ORDER ON MOTION

	SUPERIOR COURT OF NEW JERSEY
MARIAN NAWROCKI ET AL	APPELLATE DIVISION
VS	DOCKET NO.
MARIA NAWROCKI ET AL	A-004067-06T3
	MOTION NO.
	M-007233-06
	BEFORE PART: C
	JUDGES: FUENTES
	GRALL

MOTION FILED:
AUGUST 13, 2007 BY: MARIAN NAWROCKI

ANSWER(S) FILED: AUGUST 27, 2007 BY: DYFS

SUBMITTED TO COURT: SEPTEMBER 10, 2007

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 10th OF SEPTEMBER, 2007, HEREBY ORDERED AS FOLLOWS:

GRANTED	DENIED	OTHER
( )	(X)	( )

MOTION BY APPELLANT

- TO JOIN DYFS AS THIRD PARTY DEFENDANT
- TO COMPEL RELEASE OF DYFS RECORDS/FINDINGS
- FOR FURTHER RELIEF

SUPPLEMENTAL:

FILED	RECEIVED
APPELLATE DIVISION	APPELLATE DIVISION
SEPTEMBER 13, 2007	SEPTEMBER 13, 2007
S/John M. Chacko	SUPERIOR COURT
CLERK	OF NEW JERSEY
ESX FD-07-2412-06	FOR THE COURT:

S/ JOSE L. FUENTES J.A.D.

I hereby certify that the foregoing is a true copy of the original on file in my office

---

s/John M. Chacko
CLERK OF THE APPELLATE DIVISION

IMPOUNDED

ORDER ON MOTION

SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION

MARIAN NAWROCKI ET AL
VS
MARIA NAWROCKI ET AL

DOCKET NO.
A-004067-06T3
MOTION NO.
M-005796-06
BEFORE PART: K
JUDGE(S): COBURN

FILED
APPELLATE DIVISION
JUNE 25, 2007
S/John M. Chacko
CLERK

RECEIVED
APPELLATE DIVISION
JUNE 25 2007
SUPERIOR COURT
OF NEW JERSEY

MOTION FILED:
JUNE 07, 2007 —BY: MARIAN NAWROCKI
ANSWER(S) FILED:

SUBMITTED TO COURT: JUNE 20, 2007

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 21 DAY OF JUNE, 2007, HEREBY ORDERED AS FOLLOWS:

GRANTED DENIED OTHER
( ) (X) ( )

MOTION BY APPELLANT
- TO ACCELERATE THE APPEAL

SUPPLEMENTAL:

I hereby certify that the foregoing is a true copy of the original on file in my office

s/John M. Chacko
CLERK OF THE APPELLATE DIVISION

ESX FD-07-2412-06 FOR THE COURT:

S/ DONALD S. COBURN P.J.A.D.

No.

In The

SUPREME COURT of the UNITED STATES

MARIAN NAWROCKI and
BARBARA WILLIAMS-HUBBARD,

Plaintiffs/Petitioners

v.

MARIA NAWROCKI and
IMMANUEL SMITH,

Defendants/Respondents

On Petition for Writ of Certiorari
To The Superior Court of New Jersey
Appellate Division

APPENDIX B. Appellate Appeal 1.

MARIAN NAWROCKI
BARBARA WILLIAMS-HUBBARD, his wife
PLAINTIFFS/PETITIONERS, Pro Se
P.O. Box 4806, Clifton, New Jersey 07015
165 Lincoln Avenue, Clifton, New Jersey 07011
973-478-7058

RECORD IMPOUNDED

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELATE DIVISION
DOCKET NO. A-3574-05T2

M.N. and B.W.-H.,

Plaintiffs- Appellants

v.

M.N. and I.S.

Defendants- Respondents

Argued October 24, 2006- Decided November 6, 2006

Before Judges Coburn and Gilroy.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, FD-07-2412-06.

Bonnie C. Fost argued the cause for appellants (Einhorn, Harris, Ascher, Barbarito, Frost & Ironson, attorneys; M.N. and B.W.-H., on the pro se brief).

Respondents did not file a brief.

PER CURIAM

The dispute in this case is between the natural mother of the two infant children, defendant M.N., and her father and step-mother, plaintiffs M.N. and B.W.-H. The only pleading contained in the record is an order to show cause. We infer from that order, and from the certifications submitted by plaintiffs in support of their request for issuance of the order, that plaintiffs wished to interfere with defendant's custody of her children, and they wished to do so because they believed defendant was endangering the children's welfare. If a complaint was filed, it was not included in the record, a patent violation of Rule 2:6-1(a)(1).

The order to show cause, which was issued ex parte on October 31, 2005, temporarily restrained defendant from leaving New Jersey, and directed her to show cause why, among other things, plaintiffs should not be given temporary custody until evaluation could be made by competent professionals and by the Division of Youth and Family Services.[1] The order to show cause did not require the filing of an answer, see Rule 4:52-1(b), and there is no evidence that a summons was issued or an answer was filed.

By order dated December 20, 2005, the judge in the Family Part, Essex County, who signed the order to show cause, denied the relief sought. Plaintiffs filed a notice of appeal from that order.

---

[1] The record reveals that the Division evaluated the situation and determined that the children were not at risk, and a Deputy Attorney General confirmed that in court. The Division's records were submitted to the trial judge in camera, and she found that they contained no grounds for concern about the children's welfare.

Appeals may only be taken from final orders or final judgments. R. 2:2-3(a). In the instant litigation, all that has occurred is a denial of relief sought in a motion to show cause. No answer has yet been filed, there has been no trial, and no party has resorted to the summary judgment process. Plaintiffs failed to seek leave to appeal, and we perceive no justification for granting such leave at this time. We note that the trial judge permitted the defendant to move out of the state with the children and it appears that she has moved to Michigan. Presumably the courts of that state can provide adequate relief if there is any present danger to the welfare of the children

Appeal dismissed.

I hereby certify that the foregoing is a true copy of the original on file in my office

_____

s/John M. Chacko
CLERK OF THE APPELLATE DIVISION

A-3574-05T2

ORDER ON MOTION

	SUPERIOR COURT OF NEW JERSEY
MARIAN NAWROCKI	APPELLATE DIVISION
BARBARA WILLIAMS-HUBBARD	DOCKET NO A-003574-05T2
VS	.MOTION NO.
MARIA NAWROCKI	M-001674-06
	BEFORE PART: C
	JUDGES: COBURN
	GILROY

MOTION FILED: NOVEMBER 16, 2006 BY:–MN

ANSWER(S) FILED:

FILED:	RECEIVED
APPELLATE DIVISION	APPELLATE DIVISION
DEC 07 2006	DEC 7 2006
S/John M. Chacko	SUPERIOR COURT
CLERK	OF NEW JERSEY

SUBMITTED TO COURT: NOVEMBER 22, 2006

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 5th DAY OF DECEMBER, 2006, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- FOR RECONSIDERATION

GRANTED DENIED OTHER
( ) (X) ( )
SUPPLEMENTAL:
R. 2:2-3(a) PERMITS AN APPEAL AS OF RIGHT FROM A "FINAL CUSTODY DETERMINATION IN (A) BIFURCATED MATRIMONIAL ACTION." (EMPHASIS ADDED.) NO SUCH FINAL ORDER WAS ENTERED HERE. ALTHOUGH R. 5:8-6 SAYS THAT "(A)NY...ORDER PURSUANT TO THIS HEARING SHALL BE TREATED AS A FINAL JUDGMENT OR ORDER FOR CUSTODY",THAT PROVISION IS MERELY INTENDED TO ALLOW AN APPEAL AS OF RIGHT ON CUSTODY WHILE THE MATRIMONIAL CASE IS STILL PENDING. IT DOES NOT MEAN THAT EVERY ORDER PERTAINING TO CUSTODY IS APPEALABLE AS OF RIGHT.

ESX FD-07-2412-06

FOR THE COURT

JUJAG10

S/DONALD S. COBURN P.J.A.D.

I hereby certify that the foregoing is a true copy of the original on file in my office

_____

s/John M. Chacko
CLERK OF THE APPELLATE DIVISION

A-3574-05T2

ORDER ON MOTION

	SUPERIOR COURT OF NEW JERSEY
MARIAN NAWROCKI	APPELLATE DIVISION
BARBARA WILLIAMS-HUBBARD	DOCKET NO A-003574-05T2
VS	MOTION NO. M-005604-05
MARIA NAWROCKI	BEFORE PART: J
	JUDGE(S): CONLEY

MOTION FILED:	JUNE 05, 2006
BY:	MARIAN NAWROCKI
ANSWER(S) FILED:	

FILED:	RECEIVED
APPELLATE DIVISION	APPELLATE DIVISION
JUNE 28, 2006	JUNE 28, 2006
S/John M. Chacko	SUPERIOR COURT
CLERK	OF NEW JERSEY

SUBMITTED TO COURT: JUNE 21, 2006

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 26th DAY OF JUNE, 2006, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- TO ACCELERATE THE APPEAL

GRANTED	DENIED	OTHER
( )	(X)	( )

SUPPLEMENTAL:

ESX FD-07-2412-06

FOR THE COURT

JAG10

S/ERMINIE L. CONLEY P..J.A.D.

I hereby certify that the foregoing is a true copy of the original on file in my office

_____

s/John M. Chacko
CLERK OF THE APPELLATE DIVISION

A-3574-05T2

ORDER ON MOTION

	SUPERIOR COURT OF NEW JERSEY
MARIAN NAWROCKI	APPELLATE DIVISION
BARBARA WILLIAMS-HUBBARD	DOCKET NO A-003574-05T2
VS	MOTION NO. M-004010-05
MARIA NAWROCKI	BEFORE PART: F
	JUDGE(S): CONLEY SAPP-PETERSON

MOTION FILED:	FEBRUARY 22, 2006
BY:	MARIAN NAWROCKI
ANSWER(S) FILED:	MARCH 16, 2006
BY:	DYFS

FILED:	RECEIVED
APPELLATE DIVISION	APPELLATE DIVISION
MAY 1, 2006	MAY 1, 2006
S/John M. Chacko	SUPERIOR COURT
CLERK	OF NEW JERSEY

SUBMITTED TO COURT: APRIL 26, 2006

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 28th DAY OF APRIL, 2006, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- FOR STAY

GRANTED DENIED OTHER
( ) (XX) ( )
SUPPLEMENTAL:

ESX FD-07-2412-06

FOR THE COURT

JAG10

S/ERMINIE L. CONLEY P.J.A.D.

I hereby certify that the foregoing is a true copy of the original on file in my office

_____

s/John M. Chacko
CLERK OF THE APPELLATE DIVISION

No.

In The

SUPREME COURT of the UNITED STATES

MARIAN NAWROCKI and
BARBARA WILLIAMS-HUBBARD,

Plaintiffs/Petitioners

v.

MARIA NAWROCKI and
IMMANUEL SMITH,

Defendants/Respondents

On Petition for Writ of Certiorari
To The Superior Court of New Jersey
Appellate Division

APPENDIX C. Trial Court Exhibits

MARIAN NAWROCKI
BARBARA WILLIAMS-HUBBARD, his wife
PLAINTIFFS/PETITIONERS, Pro Se
P.O. Box 4806, Clifton, New Jersey 07015
165 Lincoln Avenue, Clifton, New Jersey 07011
973-478-7058

Michelle Hollar Gregory
J.S.C.
February, 22, 2007
FILED

EINHORN, HARRIS, ASCHER, BARBARITO, FROST & IRONSON
A Professional Corporation
165 E. Main Street
P.O. Box 3010
Denville, New Jersey 07834-3010
(973) 627-7300
Attorneys for Plaintiff

MARIAN NAWROCKI and BARBARA WILLIAMS HUBBARD	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: FAMILY PART ESSEX COUNTY Docket No:. FD-07-2412-06
.Plaintiff	
vs.	
MARIA NAWROCKI and IMMANUEL SMITH	CIVIL ACTION **ORDER**
Defendant.	

THIS MATTER having been brought before the Court by MARIAN NAWROCKI and BARBARA WILLIAMS-HUBBARD, (Sara McArdle, Esq

appearing); Lisa Rusciano, Esq., attorney for DYFS, and Marcella Wilson, Esq., appearing for defendants; and the Court having heard and considered the papers submitted and heard oral argument; and good cause shown:

IT IS on this 22 day of February, 2006,* hereby ORDERED as follows:

The ruling issued in this case on December 5, 2005

X Closes the case
__ Does not close the case

s/illegible

MICHELLE HOLLAR-GREGORY, J.S.C.

A comment in Judge's own handwriting added:

This Court having heard the testimony of the parties, reviewed the files regarding the medical reports and DYFS investigation finds same to be consistent with the representations and testimony presented on 12/20/05. OTCS Denied Case closed.

*Typo; date should be 2007 (added by appellants).

PLAINTIFF, Mr. Marian Nawrocki, Pro Se
PLAINTIFF, Barbara Williams-Hubbard, Pro Se
P.O. Box 4806, Clifton, NJ 07015
165 Lincoln Ave, Clifton, NJ 07011
973-478-7058

FILED
JANUARY 10, 2008
HON. MICHELLE
HOLLAR-GREGORY

MARIAN NAWROCKI and BARBARA WILLIAMS-HUBBARD	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION FAMILY PART ESSEX COUNTY
Plaintiffs	DOCKET NO. FD-07-2412-06
vs.	
	CIVIL ACTION
MARIA NAWROCKI and IMMANUEL SMITH	PROPOSED FORM OF ORDER STAY PENDING APPEAL
Defendants.	

This matter having been opened to the Honorable Michelle Hollar-Gregory, J.S.C., upon the application of PLAINTIFF, Mr. Marian Nawrocki and PLAINTIFF, Ms. Barbara Williams-Hubbard, his wife, and upon Notice of Motion to the adversary, Marcella Wilson, Esq., attorney for DEFENDANTS, Maria Nawrocki and Immanuel Smith and to Lisa Rusciano, DAG, Attorney for the Division of Youth

and Family Services, and no oral argument being requested unless the adversary objects and for good cause having been shown:

IT IS on this 9 day of January, 2006.
ORDERED AS FOLLOWS:

1. that the Court and/or the Division of Youth and Family Services ascertain the whereabouts of DEFENDANT, Maria Nawrocki, and the minor children, Felicity (5) and Isabella (4) Nawrocki-Smith, and that the Court restrain and enjoin the Defendant from leaving the State of New Jersey individually and/or with the minor children pending the appeal.
2 that the Court and/or the Division of Youth and Family Services ascertain the whereabouts of DEFENDANT, Immanuel Smith and that the Court restrain and enjoin the Defendant from leaving the State of New Jersey individually and/or with the minor children pending the appeal.
3 requiring that if either of the Defendants have left the State of New Jersey jointly and/or individually with the minor children, Defendants immediately return to the State of New Jersey with the minor children pending the appeal.
4. That a Guardian ad Litem be appointed for the children pending the appeal.
5. that temporary custody be granted to Mr. Marian Nawrocki, the Defendant Maria Nawrocki's father, pending the appeal, said appeal to include the following petitions:

a. that the evaluation done by the Division of Youth & Family Services be declared invalid due to gross

deficiencies in DYFS procedures including DYFS's conducting that evaluation nearly 5 months after Plaintiff's last reports.

b. that the children be evaluated by competent professionals trained in early childhood sexual abuse and exploitation (and who use anatomically correct dolls as part of their evaluation as we understand can be done in cooperation with the County Prosecutor's Office) and who are trained to recognize child sexual abuse accommodation syndrome.

c. that a thorough and proper investigation be conducted by DYFS and the Guardian ad Litem as to whether Defendants' living arrangements, care for the children and lifestyle are in the best interest of the children and represent safe and appropriate placement.

6. A copy of this Order shall be served upon all interested parties within three (3) days of the date thereof.

_____ GRANTED

___X___ DENIED

_____

S/Michelle Hollar-Gregory, J.S.C.

SUPERIOR COURT OF NEW JERSEY,
CHANCERY DIVISION, FAMILY PART
ESSEX VICINAGE

AMENDED ORDER

Corrected Caption

Marian Nawrocki and Barbara Williams-Hubbard E.C.D.W./ OBLIG/PLAINTIFF	CIVIL ACTION ORDER NON-DISSOLUTION DOCKET NO: FD-07-2412-06
VS.	WELFARE NO:____ PROBATION NO:___
Maria Nawrocki and Immanuel Smith OBLIG/DEFENDANT	

This matter being before the Court on a Complaint/ Motion for:

_____ Paternity ____ Support Entry or Order/ Modification

_____ Custody ____Child Abuse Neglect

_____ Visitation ____ Termination of Parental Rights

_____ Enforcement __X__ Other OSC

and good cause having been shown, it is on this 20 day of December 2005 ORDERED that:

1. The Defendant/ Obligor_____admits____denies paternity. HLA Ordered

2 The Defendant/Obligator is the father of the following child (ren):

NAME DOB NAME DOB

_____ 3. The Defendant/Obligator, shall pay to the Essex County Probation Department the sum of

$_____ effective ____, 20 ___, unallocated/ allocated $____ for spouse $___, per child ____ Beneficiary___

_____4a The defendant/obligor shall provide medical and/dental insurance covering said children/spouse whenever available through employment

_____4b The defendant/obligor shall pay excess of medical and / dental expenses over insurance

_____ 5. Arrears are fixed at $_____ as of_____, 20__. To be paid_____ directly or _____ payment through Essex County Probation at $ _____per_____. Effective_____, 20__ Beneficiary _____

_____6. An income execution shall be issued to ____in the amount of $ _____ per _____ effective ____, 20___

_____7. Custody of minor child (ren) _____ is granted to _____

_____8. Visitation with _____ is granted to _____ as follows: _____

_____ 9.Reschedule on _____

_____10. Refer to: _____ Welfare _____ Probation (reason): _____

_____11. Best interest of Children Investigation Ordered- Comments: _____

_____12. Complaint dismissed _____ Reason: _____

_____13. Order of _____20__ _____Continued, _____Vacated. _____ Suspended.

_____ 14. Default entered: The defendant/ obligor was properly served and has not appeared or answered. Accordingly default is entered as in above paragraphs.

_____15. Appearances: _____ Plaintiff, _____ Defendant ___ Other (Specify): _____

___16. Bench warrant shall be issued for: __ $ Hold Execute during Court hours _____ executed _____

17. X Other: OTSC denied DYFS to submit to the Court the legal, medical report + determination of the investigation.

FOR CONSENT CONFERENCE ONLY
WE HEREBY CONSENT TO THE ABOVE ORDER

_____

PLAINTIFF/OBLIG DATED

_____

DEFENDANT/OBLIGOR DATED

S/ MICHELLE HOLLAR GREGORY
J.S.C.

_____

SO RECOMMENDED HEARING OFFICER
DATED

SUPERIOR COURT OF NEW JERSEY,
CHANCERY DIVISION, FAMILY PART
ESSEX VICINAGE

***Incorrect Caption (added by appellants)**

Marian Nawrocki	CIVIL ACTION ORDER
E.C.D.W./ OBLIG/PLAINTIFF	NON-DISSOLUTION DOCKET NO: FD-07-2412-06
	WELFARE NO:__
VS.	PROBATION NO:__
*Barbara Hubbard OBLIG/DEFENDANT	

This matter being before the Court on a Complaint/ Motion for:
_____ Paternity ____ Support Entry or Order/ Modification
_____ Custody ____Child Abuse Neglect
_____ Visitation ____ Termination of Parental Rights
_____ Enforcement __X__ Other OSC

and good cause having been shown, it is on this 5 day of December 2005 ORDERED that:

1. The Defendant/ Obligor_____admits____denies paternity. HLA Ordered
2 The Defendant/Obligator is the father of the following child (ren):

NAME DOB NAME DOB

_____ 3. The Defendant/Obligator, shall pay to the Essex County Probation Department the sum of

$_____ effective ____, 20 ___, unallocated/ allocated $____ for spouse $___, per child ____ Beneficiary___

_____4a The defendant/obligor shall provide medical and/dental insurance covering said children/spouse whenever available through employment

_____4b The defendant/obligor shall pay excess of medical and / dental expenses over insurance

_____ 5. Arrears are fixed at $_____ as of_____, 20__. To be paid_____ directly or _____ payment through Essex County Probation at $ _____per_____. Effective_____, 20__ Beneficiary _____

_____6. An income execution shall be issued to ____in the amount of $ _____ per _____ effective ____, 20___

_____7. Custody of minor child (ren) _____ is granted to _____

_____8. Visitation with _____ is granted to _____ as follows: _____

_____ 9.Reschedule on _____

_____10. Refer to: _____ Welfare _____ Probation (reason): _____

_____11. Best interest of Children Investigation Ordered- Comments: _____

_____12. Complaint dismissed _____ Reason: _____

_____13. Order of _____20__ _____Continued, _____Vacated. _____ Suspended.

_____ 14. Default entered: The defendant/ obligor was properly served and has not appeared or answered. Accordingly default is entered as in above paragraphs.

_____15. Appearances: _____ Plaintiff, _____ Defendant ___ Other (Specify): _____

___16. Bench warrant shall be issued for: __ $ Hold Execute during Court hours _____ executed _____

17. X Other: OTSC denied DYFS to submit to the Court the legal, medical report + determination of the investigation.

FOR CONSENT CONFERENCE ONLY
WE HEREBY CONSENT TO THE ABOVE ORDER

PLAINTIFF/OBLIG DATED

DEFENDANT/OBLIGOR DATED

S/ MICHELLE HOLLAR GREGORY
J.S.C.

SO RECOMMENDED HEARING OFFICER
DATED

Law Offices of
Sara Sencer Mc Ardle, Esq.,
LLC,
415 Route 10 East
Suite Three
Randolph, New Jersey 07869
(973) 366-5244
Attorney for Plaintiffs
Marian Nawrocki and
Barbara Williams-Hubbard

FILED
OCT 31 2005
MICHELLE HOLLAR
GREGORY
J.S.C.

MARIAN NAWROCKI and BARBARA WLLIAMS-HUBBARD Plaintiffs	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ESSEX COUNTY
vs.	DOCKET NO. FD-07-2412-06
MARIAN NAWROCKI and IMMANUEL SMITH Defendants	CIVIL ACTION

ORDER TO SHOW CAUSE
ON AN EMERGENT BASIS

TO: Maria Nawrocki
263 Bloomfield Avenue
Apt. 15
Bloomfield, New Jersey 07003

Immanuel Smith
305 Orange Road
Montclair New Jersey 07042

THIS MATTER having been opened to the Court upon application by the Law Office of Sara

Sencer Mc Ardle, attorney for Plaintiffs, Marian Nawrocki and Barbara Williams-Hubbard, and it appearing that Defendants Maria Nawrocki and Immanuel Smith, appearing pro se and the Court having read and considered Plaintiffs' supporting Certification, and it appearing that if the relief requested therein is not granted, immediate and irreparable harm would be suffered by Defendant's juvenile children, and good cause having been shown;

IT IS on this 31 day of October 2005, **ORDERED** as follows:

1. Defendant Maria Nawrocki is temporarily enjoined from leaving the State of New Jersey with Felicity and Isabella Nawrocki Smth unless and until the Division of Youth and Family Services is able to conduct a psychological evaluation of the two children to determine whether or not they have been sexually, emotionally, psychologically and/or physically abused; and

2. Defendant, Maria Nawrocki is restrained and enjoined from leaving the State of New Jersey until such an evaluation is done.

3. On the 8 day of November, 2005, at 9 0'clock in the noon or as soon thereafter as counsel may be heard, Defendant, Maria Nawrocki, shall show cause before the Honorable Hollar-Gregory J.S.C. at the Superior Court of New Jersey, Essex County Court House, Newark, New Jersey, why an Order *should not* be entered as follows:

a. Enjoining Maria Nawrocki from leaving the State of New Jersey with Felicity and Isabella

Nawrocki Smith until an evaluation can be completed by the Division of Youth and Family Services.

b. Allowing Plaintiffs to have an independent psychological evaluation to determine whether or not the children have been and continue to be emotionally, psychologically, and/or sexually abused.

c. Ordering the Division of Youth and Family Services to conduct an investigation into whether Defendant's home is the appropriate placement for Felicity and Isabella Nawrocki-Smith.

d. Appointing a Guardian ad litem for the children

e. Granting temporary custody to Marian Nawrocki until the children have been evaluated by competent professionals.

4. Plaintiff shall be permitted to serve any responsive papers in connection with the instant Order to Show Cause proceeding by no later then 4 days prior to the return date hereinbefore set forth. Defendant shall then be permitted to respond thereto by no later then 2 days prior to the return date.

5. A copy of this Order shall be served upon all interested parties within three (3) days of the date hereof.

S/ MICHELLE HOLLAR GREGORY, J.S.C.

Law Offices of
Sara Sencer Mc Ardle, Esq., LLC.
415 Route 10 East
Suite Three
Randolph, New Jersey 07869
(973) 366-5244
Attorneys for Plaintiffs, Marian Nawrocki and Barbara Williams-Hubbard

MARIAN NAWROCKI and BARBARA WILLIAMS-HUBBARD Plaintiffs vs.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION FAMILY PART ESSEX COUNTY DOCKET NO: FD-07-2412-06
MARIA NAWROCKI and IMMANUEL SMITH Defendants	CIVIL ACTION CERTIFICATION IN SUPPORT OF ORDER TO SHOW CAUSE ON AN EMERGENT BASIS

I, Marian Nawrocki, of full age certify as follows:

1. I am the father of Maria Nawrocki. I was the custodial parent of my daughter, Maria Nawrocki because Maria did not get along with her mother. Maria lived with me from the time that she was eight years old. I married Barbara Williams-Hubbard on November 14, 1999.
2 Maria married Immanuel Smith in September, 1999 when they were both just eighteen years old.

The children were born soon thereafter. Felicity (D.O.B. June 11, 2000) and Isabella (D.O.B. November 12, 2001) were born into our home. Due to their parent's young age and their parent's financial circumstances, the children lived with us until November 2002.

3. We have always had a close relationship with the girls. We were their Primary caretakers until November 2002.

4. In October 2002, the children's father moved out of the home. In November, in an effort to help the two maintain their marriage, we encouraged Maria to leave our home and reunite with her husband

5. Since that time, until recently, the children frequently visited and slept over at our home. This occurred up to four times per week both during the day and at night and every other weekend.

6. Immanuel Smith was arrested for drug charges in April, 2003. He was then charged with domestic violence, a restraining order was filed and he was subsequently charged for violating that restraining order. He was in the Passaic County jail for two months for violating the restraining order in 2003, and for violation of probation in 2005.

7. The couple lost their apartment in June 2003 and the children came to live with us once again through the summer of 2003. At that time Maria filed for divorce .

8. In October, 2003 both my wife and I began to notice behaviors of the girls that caused us alarm. In addition, we learned that the children were being exposed to violence.

9. Around Christmas, 2003, Mr. Smith beat his wife up giving her a black eye.

10. On Christmas Eve, 2004, the children witnessed their father bite and beat their mother during an argument. She was bleeding and a Restraining Order was filed. The children were traumatized by the beating and called their father a "monster".
11. In December of 2003, Felicity turned herself upside down on a couch and stated to my wife, "I'm fucking you". My wife's mother and her brother also witnessed this.
12. During that time period the child also regressed and began to urinate and defecate in her diaper when she had previously been toilet trained. At the same time she began to complain about her vagina hurting and it was red[1]
13. After visiting with their father Isabella became hysterical when changing her diaper and made it impossible to bathe her.
14. Felicity took a doll of hers and began to lick it between the legs.
15. On another occasion Felicity and Isabella were seen dancing in a sexually suggestive way and kissing each other long and hard on the mouth.
16. Felicity said to Isabella in the bathtub, "let me kiss your pee pee, Isabella." They have stated that they "pray to the butt god about our peepees, our boobies and our poo poo."
17. The children have identified their mother as the "naked in the butt lady."
18. The children have discussed dancing naked with their father, their father's friends and have said that their mother danced naked too.

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[1] DYFS was called and a psychological evaluation was recommended by the physician conducting the physical evaluation, but none was ever completed by DYFS.

19. The children have stated that someone called the "butt man" takes pictures of them while they are naked. Felicity has stated that "when the "butt man puts something in your mouth it stays there for a while." When asked what he puts in her mouth, she stated "his tummy." She demonstrated, pointing to her vaginal area and stated, his "tummy".
20. On another occasion, Felicity was bouncing up and down on the bed opening a towel, exposing herself and singing "Touch my peepee, touch your dickie; touch my peepee with your dickie." Felicity has stated she, "Masurates, does masurating and the butt man comes."
20. The children have reached under a woman's dress to try to touch her private parts. My daughter, mother-in-law and my wife's brother also witnessed this. Felicity has tried to stick her hand down my wife's shirt. Felicity also tried to find my chest.
22. On one occasion, I left the bathroom and Isabella ran into the bathroom while I was brushing my teeth. She lay down on the floor, reached under my robe and grabbed my private parts through my underwear.
23. Isabella has also expressed fear that my wife and I would die in a fire. When asked who was telling her such things she stated "Daddy" through her tears.
24. Both girls have expressed thoughts that appear to demonstrate that they are depressed. Both have stated that they want to go be with God or that they think that their life is bad.
28. In June, Maria began to refuse to allow the children unsupervised visitations between the children and us because we had expressed our concern about the children's behavior.

29. On June 27, 2005, we had asked DYFS to conduct a psychological and physical evaluation of the children. My wife and I went to the Bloomfield Office and gave a DYFS worker, Cyril Nwobu, a copy of the compendium that my wife and I had made detailing our concerns. This was the third time we had asked DYFS to intervene on behalf of the children.
30. Other than going to Maria's home, DYFS did not do anything with regard evaluating whether the children had been harmed.
31. On July 31, 2005, we hired an attorney, Sara Sencer Mc Ardle and we drafted the attached letter (Exhibit A).
32. Upon receiving the letter, we received a call from Kathy Dowd, the Bloomfield DYFS District manager. She informed us that the matter had been referred to their attorneys.
33. We appealed to the Attorney General's Office to intervene.
34. At the end of August, I spoke with Kathy Dowd once again. She informed us that a psychological evaluation of the children was being scheduled for early October.
35. Kathy Dowd informed us that we would receive a letter from DYFS regarding same. No letter ever came.
36. On October 4, 2005, we sent a letter to Kathy Dowd and the Attorney General's Office requesting immediate verbal and written notification of the date when the evaluation was to take place. We also informed Ms Dowd that Immanuel Smith was being released from jail on October 8, 2005.
37. We received a call from Michelle Barbosa stating that the medical evaluation had taken place and that psychological evaluation was rescheduled.

38. We inquired as to the reason that the psychological evaluation had to be rescheduled and no reason was given.
39. Last week we learned that Maria had left her job and that she was planning to leave the State of New Jersey with the girls.
40. We immediately contacted DYFS and once again Michelle Barbosa called us to tell us that she had gotten the message concerning the "potential move" and they were working to get the girls "appropriately assessed"."
41. We learned on Friday, October 28, 2005, that Maria was planning to leave New Jersey. My wife and I believe that the reason that Maria is leaving the state is to avoid having the girls evaluated because she knows that she and Immanuel have caused psychological and emotional damage to the children.
42. I believe that Maria and Immanuel have engaged in sexual acts with the children and have harmed the children. Maria's flight, before the evaluation, demonstrates her fear at being discovered and exposed.
43. If the children are not evaluated by an expert they will suffer irreparable harm in the event that they are being abused.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

---

s/Marian Nawrocki

Dated: October 30, 2005

Law Offices of
Sara Sencer Mc Ardle, Esq., LLC.
415 Route 10 East
Suite Three
Randolph, New Jersey 07869
(973) 366-5244
Attorneys for Plaintiffs, Marian Nawrocki and Barbara Williams-Hubbard

MARIAN NAWROCKI and BARBARA WILLIAMS-HUBBARD Plaintiffs	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION FAMILY PART ESSEX COUNTY DOCKET NO: FD-07-2412-06
vs.	
MARIA NAWROCKI and IMMANUEL SMITH Defendants	CIVIL ACTION CERTIFICATION IN SUPPORT OF ORDER TO SHOW CAUSE ON AN EMERGENT BASIS

I, Barbara Williams-Hubbard, of full age certify as follows:

1. I met Marian Nawrocki in 1994. At that time he was living in Michigan with his daughter, Maria who was fourteen years old. I married Marian Nawrocki on November 14, 1999.
2. Maria married Immanuel Smith in September, 1999 when they were both just eighteen years old. The children were born soon thereafter. Felicity (D.O.B. June 11, 2000) and Isabella (D.O.B.

November 12, 2001) were born into our home. Due to their parent's young age and their parent's financial circumstances, the children lived with us until November 2002.

3. We have always had a close relationship with the girls. We were their Primary caretakers until November 2002.

4. In October 2002, the children's father moved out of the home. In November, in an effort to help the two maintain their marriage, we encouraged Maria to leave our home and reunite with her husband

5. Since that time, until recently, the children frequently visited and slept over at our home. This occurred up to four times per week both during the day and at night and every other weekend.

6. Immanuel Smith was arrested for drug charges in April, 2003. He was then charged with domestic violence and subsequently charged for violating that restraining order. He was incarcerated in the Passaic County jail for two months for violating the restraining order.

7. The couple lost their apartment in June 2003 and the children came to live with us once again through the summer of 2003. At that time Maria filed for divorce in Passaic County under Docket No. FM-16-20026-03, but later put the divorce on hold for six months.

8. In October, 2003 both my husband and I began to notice behaviors of the girls that caused us alarm. In addition we learned that the children were being exposed to violence.

9. Around Christmas, 2003, Mr. Smith beat his wife up giving her a black eye.

10. On Christmas Eve, 2004, the children witnessed their father bite and beat their mother during an

argument. She was bleeding and a Restraining Order was filed. The children were traumatized by the beating and called their father a "monster".

11. Isabella told me that her father cut her with a knife on her mouth.

12. In December of 2003, Felicity turned herself upside down on a couch and stated to me, "I'm fucking you". My husband, my mother and my brother also witnessed this.

13. During that time period the child also regressed and began to urinate and defecate in her diaper when she had previously been toilet trained. At the same time she began to complain about her vagina hurting and it was red.[1]

14. After visiting with their father Isabella became hysterical when changing her diaper and made it impossible to bathe her.

15. Felicity took a doll of hers and began to lick it between the legs. When she was asked who taught her to do that, she said, "a stranger". However, when I asked her if anyone had done this to her she stated, "Yes". When asked, "Who?" she stated, "I don't know."

16. On another occasion Felicity and Isabella were dancing in a sexually suggestive way and kissing each other long and hard on the mouth.

17. Felicity has crawled over her sister on the bed and said, "let me kiss your pee pee", Isabella" They have stated that Daddy kisses their butts and "pee pees". They have stated that they "pray to the butt god about our peepees, our boobies and our poo poo".

---

[1] DYFS was called and a psychological evaluation was recommended by the physician conducting the physical evaluation, but none was ever completed by DYFS.

18. The children have identified their mother as the "naked in the butt lady."
19. The children have discussed dancing naked with their father, their father's friends and their mother.
20. The children have stated that someone called the "butt man" takes pictures of them while they are naked. Felicity has stated that "when the butt man puts something in your mouth it stays there for a while." When asked what he puts in her mouth, she stated "his tummy." She demonstrated, pointing to her vaginal area and stated, "his tummy".
21. On another occasion, Felicity was bouncing up and down on the bed opening a towel, exposing herself and singing "Touch my peepee, touch your dickie; touch my peepee with your dickie." When wiping herself after using the toilet, Felicity started rubbing her vaginal area. She wiped herself hard stating, "I like it if it's hard; the butt man likes it too." Felicity has stated she "Masurates, does masurating and the butt man comes."
22. Felicity has stated that she couldn't wait to have a boyfriend. "He can kiss me naked, kiss my boobs and kiss my peepee."
23. The children have reached under a woman's dress to try to touch her private parts in her mother's presence. Her mother blushed and froze. My mother and brother witnessed this.
24. Felicity has tried to stick her hand down my shirt.
25. Felicity has told me to take off my shirt. She walked toward me stating, "Take your shirt off, boy. I like it when you take your shirt off and when you are naked. Thereafter, she lay on the bed and moved her body in motions simulating sex.

26. Isabella has also expressed fear that we would die in a fire. When we asked who was telling her such things she stated through her tears, "Daddy".
27. One night while sleeping at our home Felicity stated that she had something very important to tell me. She had difficulty expressing what she wanted to tell me. She started singing with the pacifier in her mouth. I asked her to take it out so that I could understand her. She sang "Sexy girl, sex girl, sexy girl" over and over. She was lying on the bed making up and down movements with her pelvis. I asked her who told her to say that and she said, "Mommy" and continued singing.
28. She then put the pacifier in her mouth. I told her that she needed to stop singing and go to sleep. She continued singing. I told her that I was taking the pacifier away until she went to sleep. I took the pacifier away. The child stopped singing, went into a trance-like state, began licking my hair my face singing "muma, muma, muma" over and over again. She closed her eyes, opened her mouth, put her tongue out and tried to give me a french kiss. She then jumped on my back making sexual movements, still singing, "muma, muma" like a mantra. I was shocked by this behavior. Her little heart was racing.
29. Both girls expressed thoughts that appear to demonstrate that they are depressed. Both have stated that they want to go be with God or that their life is bad. Felicity has stated, "I am not going to live, Grandma. It's dangerous to live."
30. In June, Maria began to refuse to allow the children unsupervised visitations between the children and us because we had expressed our concern about the children's behavior.

31. On June 27, 2005, we had asked DYFS to conduct a psychological and physical evaluation of the children. We went to the Bloomfield Office and gave a DYFS worker, Cyril Nwobu, a copy of the compendium that my husband and I had made detailing our concerns. This was the third time we had asked DYFS to intervene on behalf of the children.
32. Other than going to Maria's home, DYFS did not do anything with regard evaluating whether the children had been harmed.
33. On July 31, 2005, we hired an attorney, Sara Sencer Mc Ardle and we drafted the attached letter (Exhibit A).
34. Upon receiving the letter, we received a call from Kathy Dowd, the Bloomfield DYFS District manager. She informed us that the matter had been referred to their attorneys.
35. We appealed to the Attorney General's Office to intervene.
36. At the end, I spoke with Kathy Dowd once again. She informed us that a psychological evaluation of the children was being scheduled for early October.
37. Kathy Dowd informed me that we would receive a letter from DYFS regarding same. No letter ever came.
38. On October 4, 2005, we sent a letter to Kathy Dowd and the Attorney General's Office requesting immediate verbal and written notification of the date when the evaluation was to take place. We also informed Ms Dowd that Immanuel Smith was being released from jail on October 8, 2005.
39. We received a call from Michelle Barbosa stating that the medical evaluation had taken place and that psychological evaluation was rescheduled.

40. We inquired as to the reason that the psychological evaluation had to be rescheduled and no reason was given.
41. Last week we learned that Maria had left her job and that she was planning to leave the State of New Jersey with the girls.
42. We immediately contacted DYFS and once again Michelle Barbosa called us to tell us that she had gotten the message concerning the "potential move" and they were working to get the girls "appropriately assessed"."
43. We learned on Friday, October 28, 2005, that Maria was planning to leave New Jersey. My husband and I believe that the reason that Maria is leaving the state is to avoid having the girls evaluated because she knows that she and Immanuel have caused psychological and emotional damage to the children.
44. I believe that Maria and Immanuel have engaged in sexual acts with the children and have harmed the children. Maria's flight, before the evaluation, demonstrates her fear at being discovered and exposed.
45. If the children are not evaluated by an expert they will suffer irreparable harm in the event that they are being abused.
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

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s/Barbara Williams-Hubbard

Dated: October 30, 2005

Law Office of
Sara Sencer McArdle, LLC
Certified Criminal Trial Attorney
415 Route 10 East
Suite Three
Randolph, New Jersey 07869
Phone (973)-366-5244
Fax (973) 366-2441
July 31, 2005

Re: Felicity and Isabella Nawrocki-Smith

Dear Mr. Harvey and Mr. Louis:

I have been retained by Marian Nawrocki and his wife, Barbara Williams-Hubbard to pursue the issue of independent psychological examinations for Felicity and Isabella Nawrocki-Smith, their grandchildren. Marian is the maternal grandfather of Felicity (D.O.B. June 11, 2000) and Isabella (D.O.B. November 12, 2001). Ms. Williams-Hubbard is the step-grandmother to the children. They have asked me to intervene and encourage DYFS to conduct an independent evaluation of the two girls because they believe that given their behaviors and more importantly their actions that they are being or have been sexually abused. In addition, due to the strife between their parents, they are being exposed to violence in the home.

The children's parents married at a very young age. Magda, aka Maria Nawrocki, is the children's mother. She was married to Immanuel Smith when they were both just eighteen years old. The children were born soon thereafter. Due to their

parent's young age and their parent's financial circumstances, the children have lived many years in the Nawrocki/Williams-Hubbard home. They have a close loving relationship with their grandparents and enjoy being at their home. Mr. Smith has a record for drugs and domestic violence and has been incarcerated for failing to follow through with counseling.

Over the years, the grandparents have made complaints to DYFS regarding behaviors and statements that the children have been making. The grandparents are asking that an evaluation of the children be conducted by Toby Kaufman or Dr. Susan Esquilin. They are ready and willing to pay for same.

Due to the emotional turmoil that existed in the children's parent's relationship, in November, 2002, the Smith family moved out of the Nawrocki/ Williams-Hubbard home. Since that time, until recently, the children frequently visited and slept over at the Nawrocki-Williams-Hubbard home. This occurred up to four times per week both during the day and at night and every other weekend. Over the past few weeks, Magda Nawrocki has refused to allow unsupervised visitation between the children and their grandparents because Nawrocki and Williams-Hubbard have expressed their concern about the children's behavior.

Mr. Nawrocki and Ms. Williams-Hubbard have asked DYFS to intervene, but they are dissatisfied with the response that they are getting. They feel

that such intervention is warranted due to the behaviors that the children are displaying.

Attached you will find a thirty-five page compendium created by Marian Nawrocki and Barbara Williams-Hubbard along with a letter written by both grandparents (Exhibit A).

I am taking the liberty to highlight several things that are of special concern to me when reading the compendium.

The children witnessed their father bite and beat their mother during an argument. She was bleeding and a Restraining Order was filed. The children were traumatized by the beating and called their father a "monster." Now, apparently the Restraining Order is being ignored and the children are spending unsupervised time with their father in violation of a provision in the March 11, 2005 Order signed by Judge Diamond, Passaic County Docket No. FM-16-2026-03 (Exhibit B).

Isabella has alleged that her father cut her with a knife on her mouth.

In December of 2003, Felicity turned herself upside down on a couch and stated, "I'm fucking you" to her grandmother.

During that time period, the child also regressed and began to urinate and defecate in her overnight diaper when she had previously been toilet trained. At the same time, she began to complain about her vagina hurting and it was red.[2]

After visiting with their father, Isabella became hysterical when changing her diaper and made it impossible to bathe her.

Felicity took a doll of hers and began to lick it between the legs. When she was asked who taught her to do that, she said, "a stranger." However, when Williams-Hubbard asked her if anyone had done this to her she stated, "Yes." When asked, "Who?" she stated, "I don't know."

On another occasion, Felicity and Isabella were seen dancing in a sexually suggestive way and kissing each other long and hard on the mouth.

Felicity has crawled over to her sister on the bed and said, "let me kiss your pee pee, Isabella." They have stated that Daddy kisses their butts and "pee pees." They have stated "We pray to the butt god about our peepees, our boobies and our poopoo." The children have identified their mother as the "naked in the butt lady."

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[2] DYFS was called and a psychological evaluation was recommended by the physician conducting the physical evaluation, but none was ever completed.

The children have discussed dancing naked with their father's friends, their father and their mother.

The children have stated that someone called the "butt man" takes pictures of them while they are naked. Felicity has stated that "when the butt man puts something in your mouth, it stays there for awhile." When asked what he puts in her mouth, she stated "his tummy". She demonstrated, pointing to her vaginal area and stated, "his tummy."

On another occasion, Felicity was bouncing up and down on the bed opening a towel, exposing herself and singing, "Touch my peepee, touch your dickie; touch my peepee with your dickie." When wiping herself after using the toilet, Felicity started rubbing her vaginal area. She wiped herself hard stating, "I like it if it's hard; the butt man likes it too." Felicity has stated, "I masurate, do masurating and the butt man comes."

Felicity has stated that she couldn't wait to have a boyfriend. "He can kiss me naked, kiss my boobs and kiss my peepee."

The children have reached under a woman's dress to try to touch her private parts in the presence

of their mother. Felicity has tried to stick her hand down her grandmother's shirt.

Felicity has told her grandmother to take off her shirt. She walked toward her grandmother stating, "Take your shirt off, boy. I like it when you take your shirt off and when you are naked." Thereafter, she lay on the bed and moved her body in motions simulating sex.

Isabella spread her legs before a bath one night and stated to her grandparents: "Daddy said he's going to cut this piece." When asked what piece, she demonstrated touching her clitoris and stated: "this piece." When asked with what, she stated: "With a knife."

Isabella has also expressed fear that their grandparents would die in a fire. When asked who was telling them such things, she stated, "Daddy."

Finally and very importantly, both girls have expressed thoughts that appear to demonstrate that they are depressed. Both have stated that they want to go be with God or that they think their life is bad. Felicity has stated, "I'm not going to live, Grandma. It's dangerous to live."

In light of the foregoing, we are requesting that the Attorney General's or the Law Guardian's Office speak with DYFS and agree to have the children submit to an independent evaluation from a recognized expert in the field of child abuse. We are specifically requesting that either Dr. Susan Esquilin or Dr. Toby Kaufman be selected. My clients are willing to pay for the evaluation. In light of all of the above, it seems that such an evaluation is necessary in order to insure that these two very vunerable children are not at risk.

Thank you for your consideration with regard to this matter.

Very truly yours,

S/SARA SENCER McARDLE

cc: Lauren Carlton, AAG
Howard McCoach, AAG
Kathy Dowd, DYFS

SUPERIOR COURT OF NEW JERSEY,
CHANCERY DIVISION, FAMILY PART
ESSEX COUNTY

DOCKET NO: FD-07-2412-06-8

CIVIL ACTION COMPLAINT

NAWROCKI, MARIAN
(PAT GRANDFATHER)
HUBBARD, BARBARA W
(GRANDMOTHER)

( ) PATERNITY
(X) CUSTODY
( ) SUPPORT
( ) VISITATION
( ) MEDICAL SUPPORT

VS.

NAWROCKI, MARIA
(NAT MOTHER)
SMITH, IMMANUEL
(NAT FATHER)

PLA ADDRESS: 165 LINCOLN AVE
CLIFTON, NJ 07011-0000
PLA ADDRESS: 165 LINCOLN AVE
CLIFTON, NJ 07011-0000

DEF ADDRESS: 263 BLOOMFIELD AVE
BLOOMFIELD, NJ 07003-0000
DEF ADDRESS: 305 ORANGE ROAD 3RD FLOOR
MONTCLAIR, NJ 07042-0000

CHILDREN ARE:

NAME	DATE OF BIRTH	RESIDING AT	RESIDING WITH /RELATIONSHIP

1. NAWROCKI SMITH ISABEL 11/12/2001
   NAWROCKI MARIA NAT MOTHER
   263 BLOOMFIELD AVE BLOOMFIELD,
   NJ 07003-0000

2. NAWROCKI SMITH FELICI 06/11/2000
   NAWROCKI MARIA NAT MOTHER
   263 BLOOMFIELD AVE BLOOMFIELD,
   NJ 07003-0000
3.
4.
5.
6.
7.
8.
9.
10.

( ) 1.PLAINTIF SEEKS ADJUCATION OF PATERNITY FOR THE CHILD(REN) NAMED ON PAGE 1.
( ) 2. PLAINTIFF SEEKS ESTABLISHMENT OF SUPPORT ORDER AGAINST DEFENDANT WHO IS THE SPOUSE AND/OR PARENT OF THE PERSONS LISTED ON PAGE 1 AND HAS A LEGAL DUTY TO SUPPORT SAME PURSUANT TO N.J.S.A.9:17-38 ET SEQ, CHAPTER 92. LAWS OF 1990 REQUIRES THAT CHILD SUPPORT PROVISIONS OF COURT ORDERS SHALL BE ENFORCED BY IMMEDIATE INCOME WITHOLDING UPON THE OBLIGOR'S CURRENT OR FUTURE INCOME DUE FROM AN EMPLOYER, OR FUTURE EMPLOYER. UNEMPLOYMENT COMPENSATION OR INCOME FROM ANY SOURCE UNLESS THE OBLIGOR

AND OBLIGEE AGREE, IN WRITING TO AN ALTERNATIVE ARRANGEMENT OR EITHER PARTY DEMONSTRATES AND THE COURT FINDS GOOD CAUSE FOR ESTABLISHING AN ALTERNATIVE ARRANGEMENT (N.J.S.A. 2A:17-56.9). FOR THE REASON(S) CHECKED BELOW, THE DEFENDANT IS UNDER A LEGAL DUTY TO SUPPORT AND MAINTAIN THE PERSONS MENTIONED ON PAGE 1 HEREOF:
( ) S/HE IS THE LAWFUL WIFE/ HUSBAND OF PLAINTIFF
( ) S/HE IS THE MOTHER/ FATHER OF THE CHILD(REN), NAMED ON PAGE 1.

( ) 3. THIS IS AN ACTIVE PUBLIC ASSISTANCE CASE GOVERNED BY 41 U.S.C.A. 602(A) (26), N.J.S.A. 44:10-2. CASE NO.

(X) 4. PLAINTIFF BELIEVES THAT IN THE BEST INETEREST OF THE CHILD(REN) CUSTODY SHOULD BE GRANTED TO THE PLAINTIFF

( ) 5. PLAINTIFF SEEKS AN ORDER OF THIS COURT GRANTING/ DENYING REASONABLE RIGHTS OF VISITATION.

( ) 6. MEDICAL COVERAGE REQUESTED
  ( ) PETITIONER DOES SEEK HEALTH BENEFITS FOR SELF
  ( ) PETITIONER DOES SEEK HEALTH BENEFITS FOR CHILDREN NAMED HEREIN

(X) COMMENTS:

PLAS (MARIAN NAWROCKI & BARBARA WILLIAMS HUBBARD) FILING OTSC (CUSTODY, MINORS STAY NJ, GUARDIAN, PSYCHOLOGICAL EVALUATION FOR ABUSE, SEXUAL, ETC).

CERTIFICATION (RULE 1:4-4(B))
I CERTIFY THAT THE FOREGOING STATEMENTS MADE MY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT

S/ illegible

_____ 10/31/2005
WITNESS DATE

S/ Barbara Williams-Hubbard

_____
PLAINTIFF

Rev. 10/99

No.

In The

SUPREME COURT of the UNITED STATES

MARIAN NAWROCKI and
BARBARA WILLIAMS-HUBBARD,

Plaintiffs/Petitioners

v.

MARIA NAWROCKI and
IMMANUEL SMITH,

Defendants/Respondents

On Petition for Writ of Certiorari
To The Superior Court of New Jersey
Appellate Division

APPENDIX D. New Jersey Supreme Court

MARIAN NAWROCKI
BARBARA WILLIAMS-HUBBARD, his wife
PLAINTIFFS/PETITIONERS, Pro Se
P.O. Box 4806, Clifton, New Jersey 07015
165 Lincoln Avenue, Clifton, New Jersey 07011
973-478-7058

SUPREME COURT OF NEW JERSEY

C-939 September Term 2007

62,449

M.N., et al.,

Plaintiffs-Petitioners

v.

M.N., et al.,

Defendants-Respondents

ON PETITION FOR CERTIFICATION
FILED
MAY 16, 2008
S/ STEPHEN W. TOWNSEND
CLERK

To the Appellate Division, Superior Court:

A Petition for Certification of the judgment in A-4067-06 having been submitted to this Court, and the Court having considered the same:

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Virginia A. Long, Presiding Justice at Trenton, this 13th day of May, 2008

The foregoing is a true copy of the original on file in my office

CLERK OF THE SUPREME COURT
OF NEW JERSEY
S/ STEPHEN W. TOWNSEND
CLERK OF THE SUPREME COURT

No.

In The

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MARIAN NAWROCKI and
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Plaintiffs/Petitioners

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MARIA NAWROCKI and
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To The Superior Court of New Jersey
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APPENDIX E. Supplementary Information

MARIAN NAWROCKI
BARBARA WILLIAMS-HUBBARD, his wife
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VERBATIM CITATIONS

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States of America: Amendment XlV. Section 1 (ratified July 9, 1868)

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

NJ Constitution 1947: Article 1: Rights and Privileges

Article 1, ¶ 1 : "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."

Article 1, ¶ 2.a. "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the

right at all times to alter or reform same, whenever the public good may require it."

Article 1, ¶ 5 : "No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin."

New Jersey Statutes:

N.J.S.A. 9:6-8.34. Persons who may originate proceedings. The following persons may originate a proceeding under this act:
a. A parent or other person interested in the child.
d. Any person having knowledge or information of a nature which convinces him that a child is abused or neglected.

N.J.S.A. 9:6-8.10a.b (18) Reports and information of child abuse reports; confidentiality; release

All records of child abuse reports made pursuant to section 3 of P.L.1971, c. 437 (C.9:608,10), all information obtained by the Div. of Youth and Family Services in investigating such reports including reports received pursuant to section 20 of P.L.1974, c. 119(C.9:6-8:40), and all reports of findings forwarded to the central registry pursuant to section 4 of P.L. 1971, c. 437 (C.9:6-8.11) shall be kept confidential and may be disclosed only under the circumstances expressly authorized under

subsections b., c., d,. e. and f. herein. The division shall disclose information only as authorized under subsections b., c., d,. e, and f. of this section that is relevant to the purpose for which the information is required, provided, however, that nothing may be disclosed which would likely endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person or which may compromise the integrity of a division investigation or a civil or criminal investigation or judicial proceeding. If the division denies access to specific information on this basis, the requesting entity may seek disclosure through the Chancery Division of the Superior Court. This section shall not be construed to prohibit disclosure pursuant to paragraphs (2) and (7) of subsection b. of this section.

Nothing in this act shall be construed to permit the disclosure of any information deemed confidential by federal or State law.

b. The division may and upon written request, shall release the records and reports referred to in subsection a., or parts thereof, consistent with the provisions of P.L. 1997, c.175 (C.9:6-8.83) to:

(18) A person who has filed a report of suspected child abuse or neglect for the purpose of providing that person with only the disposition of the investigation.

N.J.S.A. 30:4C-12. (Care, Custody, Guardianship); Complaint; Investigation; hearing; order making child ward of court; duration of order; extension. and Case Law, Note 8.

Whenever it shall appear that the parent or parents, guardian, or person having custody and control of any child within this State is unfit to be entrusted with the care and education of such child, or shall fail to provide such child with proper protection, maintenance and education, or is endangering the welfare of such child, a written or oral complaint may be filed with the Division of Youth and Family Services by any person or by any public or private agency or institution interested in such child. When such a complaint is filed by a public or private agency or institution, it shall be accompanied by a summary setting forth the reason for such complaint and other social history of the child and his family's situation which justifies such complaint;.....

Upon receipt of a complaint as provided in this section, the Division of Youth and Family Services shall investigate, or shall cause to be investigated, the statements set forth in such complaint.

Chapter E Notes of Decisions: Note 8. Representation of child

In all cases where it appears from examination of Div. of Youth and Family Services' own files or from colorably reliable information presented to it that there is significant conflict in opinion concerning

what is in best interests of child, or when it appears that child's best interests are likely to be subordinate to interests of parents or Div. of Youth and Family Services, independent representation for child is required. Doe v. State, Dept. of Human Services, Div. of Youth and Family Services, 165 N.J. Super. 392, 398 A.2d 562 (A.D. 1979).

New Jersey Rules:

R. 2:2-3(a)(2) Appeals to the Appellate Division From Final Judgments, Divisions, Actions and From Rules; Tax Court

(a) As of Right. Except as otherwise provided by R. 2:2-1(a)(3) (final judgments appealable directly to the Supreme Court), appeals may be taken to the Appellate Division as of right
(2) to review final decisions or actions of any state administrative agency or officer, and to review the validity of any rule promulgated by such agency or officer excepting matters prescribed by R. 8:2 (tax matters) and matters governed by R. 4:74-8 (Wage Collection Section appeals) except that review pursuant to this subparagraph shall not be maintainable so long as there is available a right of review before any administrative agency or officer, unless the interest of justice requires otherwise;

Rules of Evidence. Rule 63 (33): Statements by child relating to a sexual offense.

A statement of a child under the age of 12 relating to a sexual offense under the Code of Criminal Justice committed on, with, or against that child is admissible in a criminal proceeding brought against a defendant for the commission of such offense if (a) the proponent of the statement makes known to the adverse party his intention to offer the statement and the particulars of the statement at such a time as to provide him with a fair opportunity to prepare to meet it; (b) the court finds, in a hearing conducted pursuant to Rule 8(1), that on the basis of the time, content, and circumstances of the statement there is a probability that the statement is trustworthy; and (c) either (i) the child testifies at the proceeding, or (ii) the child is unavailable as a witness and there is offered admissible evidence corroborating the act of sexual abuse; provided that no child whose .....(illegible) to be offered in evidence pursuant to this rule shall be disqualified to be a witness in such proceeding by virtue of the requirements of paragraph (b) of Rule 17.

VERBATIM CITATIONS

PORTIONS OF THE TRIAL COURT RECORD

Transcript 1T: November 29, 2005
Transcript 2T: December 5, 2005

1. Issue: DYFS Procedures/Untimely Evaluation

A. Transcript 1T 7:2-9

MISS MCARDLE: I don't think it's harassing Judge. These grandparents have deep concerns about children who spend a good piece of their lives with them. I don't think their intent is at all to harass. But their intent is to make sure that these children are safe. That is the intent. A 45-minute DYFS evaluation in Champ two years or three years after it was originally requested, does not seem sufficient.

B. Transcript 2T5:7-2T6:1-23

MS. MCARDLE: ....Recognizing that we are not allowed to ferret through DYFS records, I understand that, Your Honor. However, without being able to at least look at the records and examine how the examinations were done of the children and evaluate how DYFS came to whatever conclusion they've come to, which obviously I don't know, I will not be prepared to answer or meet whatever findings that they have made.

Our contention is that the children have been

sexually abused, not so much physically as emotionally abused. Your Honor; that they have been subject to acts—to viewing acts of domestic violence. And without being able to look at DYFS' reports and see what conclusions DYFS came to, what information Champ (phonetic) had prior to seeing the children, did they have the opportunity to look at the compendium, did they have the opportunity to evaluate and look at what the allegations were, we won't be able to meet or adequately protect the children from what quite frankly we believe is an---is an imperfect DYFS evaluation.

The children---Mr.---Mr. Nawrocki and Miss Williams-Hubbard brought this issue to DYFS' attention two years ago. I don't know if you've read the compendium, Your Honor, but the compendium details what was going on with the children back in 2003, the various statements that they have made, the various behaviors that they have displayed that are of a concern to us. And we don't know, number one, what DYFS did with that information. Number two, what information they related to the Champ eval—evaluators to---so that their concerns were viewed by Champ so that Champ could do a thorough investigation.

We understand that the Champ investigation was about a 45 minute interview of the children. And given the---the level of what's gone on in this case, we're concerned that that certainly wouldn't be enough to determine whether or not abuse actually occurred.

So that would be our reason for wanting to see DYFS reports.

C. Transcript 2T11:17-25.

MS. MCARDLE: ....With regard to DYFS, it took them
---and the DYFS evaluation, this evaluation was supposed to be done in 2003, Judge. These children have now---we asked for it in July for the evaluation. It took four months for that to occur.
In the meantime, they were with their mother, They were with their grandmother. They were able to be spoken to, talked to. But we have grave questions about the validity of the DYFS evaluation in light of the time that went by.

2. Issue: Guardian ad Litem

A. 1T11:2-14, 1T11:25-12:5

MS. MC ARDLE: Judge would consider appointing a guardian ad litem?

THE COURT: For what purpose?

MISS MC ARDLE: To make sure that the children are safe. For somebody to have more than 45-minute evaluation of the children. And that's exactly what Champ has, a 45-minute evaluation. And I would point out to the court that this evaluation was supposed to occur in 2003. And it took numerous letters all over the State in order to get this

evaluation done. We asked for it in July. DYFS did it the day after you issued the order to show cause on November 1st, I believe.

Ms. RUSCIANO.....

THE COURT: At this time I'm not going to order a guardian. I think it would be inappropriate and premature.....

B. Transcript 2T12:8-2T13:1-8

MS. MCARDLE: .....last time you said you didn't want to deal with the Guardian ad Litem issue...

THE COURT: You can address that if you want to.

.....

.....

THE COURT: I just indicated I was not inclined to appoint a guardian at that time.

MS. MCARDLE: Right....and if you deny everything that we've asked for, Judge, I would ask that you set a trial date at least so that we can go into these issues and explore them and make—make sure that the children are safe.

With regard to the guardian ad Litem, I would ask that one be appointed so that---and---and it's kind of moot if the children go to Michigan...so a lot of this will hinge on your decision with regard to that.